



CPT/Inf (2013) 6

## **Report**

**to the Spanish Government  
on the visit to Spain  
carried out by the European Committee  
for the Prevention of Torture and Inhuman  
or Degrading Treatment or Punishment (CPT)**

**from 31 May to 13 June 2011**

The Spanish Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2013) 7.

Strasbourg, 30 April 2013



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**Copy of the letter transmitting the CPT's report**

Ms María Ángeles González García  
Technical General Secretary  
Ministry of the Interior  
Amador de Los Ríos No. 5  
E- 28071 Madrid

Strasbourg, 7 December 2011

Dear Ms González García,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I enclose herewith the report to the Government of Spain drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to Spain from 31 May to 13 June 2011. The report was adopted by the CPT at its 76th meeting, held from 7 to 11 November 2011.

The various recommendations, comments and requests for information formulated by the CPT are listed in Appendix I of the report. As regards more particularly the CPT's recommendations, having regard to Article 10 of the Convention, the Committee requests the Spanish authorities to provide within **six months** a response giving a full account of action taken to implement them. The CPT trusts that it will also be possible for the Spanish authorities to provide, in the above-mentioned response, reactions and replies to the comments and requests for information.

As regards the recommendations in paragraphs 15 and 30, the Committee requests the Spanish authorities to provide a response within **three months**.

I am at your entire disposal if you have any questions concerning either the CPT's report or the future procedure.

Yours sincerely,

Lətif Hüseyinov  
President of the European Committee for the  
Prevention of Torture and Inhuman  
or Degrading Treatment or Punishment

Copy: Mr Fernando Alvargonzález, Ambassador Extraordinary and Plenipotentiary,  
Permanent Representative of Spain to the Council of Europe





## I. INTRODUCTION

### A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT carried out a visit to Spain from 31 May to 13 June 2011. The visit was organised within the framework of the CPT’s programme of periodic visits for 2011; it was the Committee’s 12<sup>th</sup> visit to Spain and the 6<sup>th</sup> of a periodic nature<sup>1</sup>.

2. The visit was carried out by the following members of the CPT:

- Mauro PALMA, Head of delegation
- Celso DAS NEVES MANATA
- Marija DEFINIS-GOJANOVIĆ
- Georg HØYER
- Petros MICHAELIDES
- Arman VARDANYAN.

They were supported by the following members of the CPT’s Secretariat:

- Hugh CHETWYND (Head of Division)
- Cristian LODA

and assisted by:

- Paolo CARLOTTO, Police Chief Inspector in Padova, Italy (expert)
- Loreto BRAVO DE URQUIA, Interpreter
- Ines CARAVIA, Interpreter
- Stephen CARLIN, Interpreter
- Beth GELB, Interpreter
- Claude LORD, Interpreter
- John MATTHEWS, Interpreter.

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<sup>1</sup> The previous five periodic visits took place in April 1991, April 1994, November/December 1998, July/August 2003 and September/October 2007. The six ad hoc visits to Spain were carried out in June 1994, January 1997, April 1997, July 2001, December 2005 and January 2007

**B. Establishments visited**

3. The delegation visited the following places:

**Establishments under the Ministry of the Interior of Spain**

***National Police***

- National Police Station District Headquarters, Barcelona
- National Police Station, Cádiz
- Central registry of detained persons, Moratalaz, Madrid
- National Police Station, Moratalaz, Madrid
- National Police Station, Puente de Vallecas, Madrid
- National Police Station, Puerto de Santa María

***Guardia Civil***

- Detention Unit of the Central Section of the Information Service, Jefatura, Calle Guzmán el Bueno, Madrid
- Tres Cantos Station, Madrid
- Las Rozas Station, Madrid

***Prison establishments***

- Córdoba Prison\*
- Madrid IV Prison (Navalcarnero)
- Nanclares de la Oca Prison
- Puerto III Prison Cádiz
- Madrid V Prison (Soto del Real)\*
- Madrid II Prison (Alcalá-Meco – men)\*

\* These prisons were visited exclusively for the purpose of interviewing specific prisoners or to examine a particular issue.

***Detention centres for foreign nationals***

- Aluche, Madrid
- Zona Franca, Barcelona

**Establishments under the Autonomous Regional Government of the Basque Country (Eusko Jaurlaritza)**

- General Headquarters and Police Academy Arkaute, Basque Autonomous Police (Ertzaintza), Vitoria

**Establishments under the Autonomous Regional Government of Catalonia (Generalitat de Catalunya)**

***Catalan Autonomous Police (Mossos d'Esquadra)***

- Mossos d'Esquadra District Station « Les Corts », Barcelona
- Mossos d'Esquadra District Station Badalona, Barcelona
- Mossos d'Esquadra Juvenile Detention Centre, Ciutat de la Justícia, Barcelona
- Mossos d'Esquadra District Station, Granollers
- Mossos d'Esquadra District Station, l'Hospitalet

***Prisons***

- Penitentiary Centre Brians 1
- Penitentiary Centre Joves (Quatre Camins)
- Penitentiary Centre Lledoners
- Penitentiary Centre for men (“la Modelo”), Barcelona

***Juvenile institutions***

- Alzina Educational Centre

### C. Consultations held by the delegation

4. In the course of the visit, the CPT's delegation held consultations, at the central level, with the Minister of Interior, Antonio CAMACHO VIZCAINO<sup>2</sup>, the President of the Audiencia Nacional, Angel JUANES PECES, the Prosecutor-General, Candido CONDE-PUMPIDO, the Director General of the National Police and Guardia Civil, Francisco Javier VELAZQUEZ LOPEZ, and the Director General of Penitentiary Institutions, Mercedes GALLIZO LLAMAS. It also met with representatives of the General Council of the Judiciary of Spain.

In Catalonia, the delegation met with representatives of the *Generalitat de Catalunya*, notably the *Conseller* of the Interior, Felip PUIG I GODES, the *Consellera* of Justice, Pilar FERNÁNDEZ I BOZAL, the Director General of Penitentiary Services, Ramon PARÉS GALÉS, the Director General of Community Sanctions and Juvenile Justice, Quim CLAVAGUERA I VILLA, the Director General of the Mossos-d'Esquadra, Manel PRAT I PELÁEZ, and the Secretary General of the Department of Interior, Xavier GIBERT I ESPIER.

The delegation also met the Catalan Ombudsman, Mr Rafael RIBO I MASSO and the Head of the Spanish National Preventive Mechanism (NPM), Ms Carmen COMAS-MATA MIRA, as well as representatives of the Basque Ombudsmen. Further, it held discussions with representatives of non-governmental organisations active in areas of concern to the CPT.

A list of the authorities and organisations met by the delegation is set out in Appendix II to this report.

### D. Co-operation between the CPT and the authorities of Spain

5. The co-operation received by the CPT's delegation from the Spanish and Catalan authorities as well as from the management and staff in the establishments visited was, with one important exception, excellent. The delegation had rapid access to the places of detention visited, was able to meet with those persons with whom it wanted to speak in private and was provided with access to the information it required to carry out its task.

The exception concerned access to the Detention Unit of the Guardia Civil Information Service at its Headquarters in Calle Guzmán el Bueno in Madrid. The delegation was denied access for over an hour to the detention area by Civil Guard officials who told the delegation that the building was not in use; given that almost every person who is placed under incommunicado detention is held in these premises, such a position was not tenable. The delegation was further obstructed by the fact that the keys to the facility were not available; it managed to find a back-door entrance which was opened from the inside by a cleaner. The CPT's delegation had confronted the same obstacles in accessing this facility in the course of the 2007 visit and yet no action had been taken to prevent a recurrence of this situation. **The Committee trusts that the Spanish authorities will now take the necessary steps to ensure that such a situation is not encountered during future visits.**

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<sup>2</sup> At the time of the visit, he was Secretary of State for Security.

6. The principle of co-operation set out in Article 3 of the Convention is not limited to taking steps to facilitate the task of visiting delegations. It also requires that decisive action be taken to improve the situation in the light of the Committee's key recommendations. In this respect, the CPT is concerned to note that little or no action has been taken in respect of certain longstanding key recommendations made in previous reports, in particular as regards the right of prompt and effective access to a lawyer as from the very outset of deprivation of liberty by law enforcement agencies, including in the context of incommunicado detention. Further areas of concern relate to the use of means of restraint in prisons and the continued overcrowding in the prison system. The Committee urges the Spanish authorities to step up its efforts to improve the situation in the light of its recommendations, in accordance with the principle of co-operation which lies at the heart of the Convention.

As regards more specifically the situation in Modelo Prison in Barcelona, the CPT's delegation found that the conditions of detention had not improved since the previous visit and the establishment continued to be grossly overcrowded. The lack of action to address the state of affairs in this prison, despite repeated recommendations since 1994, leaves the CPT little choice but to contemplate the opening of the procedure envisaged under Article 10, paragraph 2, of the Convention<sup>3</sup> unless the authorities take concerted measures without further delay to remedy the conditions of detention in this prison, which will require a drastic reduction in the overcrowding. The Committee trusts that the authorities' action will render such a step unnecessary.

#### **E. Immediate observations under Article 8, paragraph 5, of the Convention**

7. At the meeting which took place at the end of the visit, on 13 June 2011, the CPT's delegation made an immediate observation under Article 8, paragraph 5, of the Convention in which it requested that the Spanish authorities immediately cease to use the concrete block in Córdoba Prison for the purposes of restraining an inmate and, that all prison staff be reminded that handcuffs should not be used for attaching prisoners to a bed.

Further, the CPT's delegation requested that a prompt and independent inquiry be carried out into the events on the night of 22 May 2011 at the Aluche Centre for Foreign Nationals.

8. By letter of 21 June 2011, the Spanish authorities responded to the immediate observations raised by the delegation. Regrettably, the Spanish authorities did not undertake a prompt inquiry into the events at the Aluche Centre for Foreign Nationals, as requested.

The CPT also received detailed comments from the Department of Justice of Catalonia on 23 September 2011, in response to the preliminary observations made by its delegation at the end of the visit. These responses have been taken into account in the relevant sections of the present report.

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<sup>3</sup> Article 10, paragraph 2, reads as follows: "If the Party fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after the Party has had an opportunity to make known its views, by a majority of two-thirds of its members to make a public statement on the matter".

## II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

### A. Law enforcement agencies

#### 1. Preliminary remarks

9. In the course of the 6<sup>th</sup> periodic visit, the delegation revisited certain law enforcement establishments and visited for the first time the Guardia Civil station Las Rozas in Madrid and National Police stations in Cádiz and Puerto Santa Maria.

Particular attention was again devoted to the application of incommunicado detention, notably in respect of several recent operations carried out by the Guardia Civil.

10. The general legal framework governing the deprivation of liberty has not fundamentally changed since the first CPT visit to Spain in 1991. Criminal suspects may be held in custody by law enforcement agencies for up to 72 hours and this custody may be extended by judicial decision for a further 48 hours in respect of offences referred to in Article 384 *bis* of the Code of Criminal Procedure (CCP), i.e. “membership or relationship with armed groups or terrorist or rebellious individuals”. An investigative judge may authorise that a person detained under Article 384 *bis* be held incommunicado during these five days. Further, the 2003 amendments contained in Organic Law 13/2003 include, notably, a provision granting the judicial authority the possibility to authorise the incommunicado detention to be extended for an additional period not exceeding five days when the person is placed in prison on remand. Moreover, a further period of incommunicado detention not exceeding three days may be authorised by the relevant judicial authority, if required by the complexity of the investigation.<sup>4</sup>

In the course of the visit the delegation examined the implementation of the September 2007 “Instructions on the behaviour required from security forces in order to safeguard the rights of persons arrested or in police custody” issued by the Secretary of State for Security of the Ministry of the Interior<sup>5</sup>. These Instructions were adopted immediately before the CPT’s visit in 2007. In the report on the 2007 visit, the CPT welcomed their adoption, but deemed it premature to assess their effectiveness in practice, especially given that most of the law enforcement establishments visited had no knowledge of the Instructions<sup>6</sup>. However, as mentioned in the report on the 2007 visit, the Instructions represent a step forward in certain areas such as the right of access to an ex officio lawyer within the shortest possible delay (Part III.5), access to medical assistance through a State-appointed forensic doctor (Part III.6) and a ban on any form of physical and/or psychological pressure to obtain a statement. However, the Instructions do not provide for the right of a detained person to consult a lawyer (whether of one’s own choice or court-appointed) in private prior to making a statement nor for the right of access to a doctor of one’s choice.

Procedurally, the Instructions recall (Part III.1) that arrested persons should be immediately

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<sup>4</sup> Article 509 Ley Organica de Enjuiciamiento Criminal 13/2003.

<sup>5</sup> *Instrucción 12/2007 (del 14 de septiembre 2007) de la Secretaria de Estado de Seguridad sobre los Comportamientos Exigidos a los Miembros de las Fuerzas y Cuerpos de Seguridad del Estado para Garantizar los Derechos de las Personas Detenidas o bajo Custodia Policial.*

<sup>6</sup> See CPT/Inf (2011)11, paragraph 53.

informed of their rights in a language they can understand. A form (“*ficha de derechos*”) was adopted to be filled out for each person deprived of his or her liberty by law enforcement officials. The form includes a series of boxes which correspond to certain safeguards that should be provided to detained persons and confirmed in writing. Such forms are an integral part of the custody register for all individuals deprived of their liberty.

## 2. Incommunicado detention

### a. introduction

11. The CPT first looked into the issue of incommunicado detention during its visit to Spain in 1991, and an assessment of the system in place following the legislative reform of 2003 was provided in the Committee’s report on the 2007 visit<sup>7</sup>. In particular, the CPT addressed some specific areas in which it put forward recommendations to strengthen the safeguards in practice for persons held in incommunicado detention. Notably, the prohibition of incommunicado detention for minors; the necessity for a detained person to be brought physically before the competent judge prior to the taking of the decision on the extension of the period of detention beyond 72 hours; the right to meet and talk in private with an *ex officio* lawyer; the right of access to a doctor of one’s own choice; the right to have a third person informed about one’s detention at the earliest possible moment and in no case later than 48 hours after the moment of the deprivation of liberty; the adoption of a code of conduct on questioning and interrogation; and the full video and audio recording of all aspects of incommunicado detention. The CPT also proposed that the application of certain measures, adopted by two investigative judges of the Audiencia Nacional on a number of occasions since 2006, be extended.

12. In the course of the 2011 visit, the CPT’s delegation re-examined the modalities and safeguards applied to the incommunicado detention regime (*incomunicación*), in relation to operations conducted by the Guardia Civil on 18 January and 1 March 2011, and which resulted in the arrest of 16 persons.

The delegation interviewed eleven of the sixteen persons concerned and was granted access to extensive Guardia Civil and Audiencia Nacional documentation relating to their detentions. The delegation also held discussions with the President of the Audiencia Nacional and Chief State Prosecutor in relation to this topic.

13. The legal framework of incommunicado detention, as regulated by Articles 509, 510, 520 bis and 527 of the CCP, has been described by the CPT in previous visit reports.<sup>8</sup> Incommunicado detention is foreseen as an exceptional measure in order to preserve evidence which is crucial for the ongoing investigation. It may be imposed for an initial period of five days of police custody and may also be applied during remand custody in prison for a maximum period of eight days depending on the circumstances and the nature of the criminal offence (see paragraph 10).

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<sup>7</sup> See CPT/Inf (2011) 11, paragraphs 27 to 50.

<sup>8</sup> See CPT/Inf (96) 9 (Part 1) Appendix II.

Persons detained under the incommunicado regime still do not legally enjoy the right to have the fact and place of their detention notified to a person of their choice (or if a foreign national to inform the Consular Representation of their country), to appoint a lawyer of their own choice, or to meet in private with the duty lawyer appointed to assist them, even after the formal statement to the law enforcement officials has been made. Nor do they have the right to meet with a doctor of their own choice.

b. torture and other forms of ill-treatment

14. The delegation received credible and consistent allegations of ill-treatment from 10 of the 11 persons interviewed who had been held under incommunicado detention in operations conducted by the Guardia Civil during the first few months of 2011. The alleged ill-treatment apparently started during the transfer by vehicle from the place of apprehension to the detention facility in Madrid; it consisted primarily of kicks and blows with truncheons to the head and body. Further, during their interrogation, they alleged that a plastic bag was placed over their heads, inducing in them a sensation of being asphyxiated (a practice known as “la bolsa”) and that, at the same time, they were forced to perform prolonged physical exercises. One person alleged that he was threatened with sexual abuse, after his trousers and underwear were removed, while another person stated that she was sexually abused. Several persons also reported hearing the screams of a companion from an adjacent interrogation room. From the information gathered, it appeared that the aim of the alleged ill-treatment was to get the detained person concerned to sign a declaration (i.e. a confession) before the end of the incommunicado detention and to have the declaration confirmed before the court hearing<sup>9</sup>.

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<sup>9</sup> The principle that incommunicado detention should never be aimed at extracting information or confessions from detained persons has been recently the subject of three judgments by the Audiencia Nacional. In particular, Sentence no. 45/2008 acquitted a person accused of terrorism offences who had made a confession while held under incommunicado detention as the Court considered that his statement was not given in “total and absolute freedom of spirit”. Similarly, Sentence no. 27/2010 of the Audiencia Nacional affirmed that the declarations given by the accused were not significant as it was not excluded that the detained person had been subjected to ill-treatment. Finally, in Sentence 30/2011 the Audiencia Nacional considered that the declaration was obtained from the accused under duress and that the system of incommunicado detention should not be focused on obtaining a confession.



For example, one person alleged that he was detained in a Guardia Civil facility in Madrid, which he was unable to identify as he was kept blindfolded whenever he was moved out of his cell. He alleged that during the interrogation sessions he was subjected to slaps, punches and kicks to the head and body by officers and that he was permanently kept hooded. Further, he stated that he was forced to perform physical exercises such as push-ups and squats, and that on a number of occasions a plastic bag was placed over his head and water poured over the plastic bag. The detained person claimed that he had informed the forensic doctor about the ill-treatment and that the injuries on his body were described in the written report given by the forensic doctor. Indeed, these reports note that the detained person alleged “that they put a plastic bag on his head on six occasions and obliged him to perform push-ups”. It is reported that during a second interrogation session “officers placed the plastic bag over his head on seven to eight occasions, although he was forced to do fewer push-ups; they beat him on the head and on his testicles with a rolled paper”. On the same day, in the evening, the report notes that he alleged the same treatment occurred during another interrogation session lasting 45 to 60 minutes and that he vomited. On this occasion, he agreed to be checked by the doctor and in the report it is noted: “In the acromial area of his right shoulder is visible an evolving ecchymosis of an irregular shape as well as in the area of his trapezium muscle, [...] He doesn’t want to show his intimate parts”. On the last day of the incommunicado detention the forensic doctor reported that “from the forensic medical point of view he is fit to give the declaration”.

Another person interviewed described being subjected to similar treatment while detained in Calle Guzman el Bueno and stated that in the course of one interrogation session, the physical treatment caused him to faint and that he had only regained consciousness back in his cell. He also recalled that he could clearly hear the screams of other persons from the adjacent interrogation room. The reports of the forensic doctor did not mention any ill-treatment. However, the forensic doctor did record on the fifth day of detention that the detained person was in a state of anxiety and was prescribed tranquillisers, but concluded that the detained person was fit to give a statement.<sup>10</sup> The detained person said he raised the question of ill-treatment at his hearing before the Audiencia Nacional, but that no follow-up action was taken.

A third person alleged that she had been slapped and punched during her transfer by the Guardia Civil to Madrid, and that during the first interrogation in Calle Guzman el Bueno she was kept naked, and wrapped in a blanket on the floor and repeatedly hit. She also alleged that in the course of one interrogation session, while being subjected to “la bolsa”, vaseline was applied to her vagina and anus and a stick inserted into her rectum, accompanied by threats of more sexual abuse if she refused to talk. Further, she alleged that she was always kept naked during each interrogation session and continued to receive threats of further physical abuse to her and to her partner; in particular she reported that after being wetted with water, electrodes were attached to her body and she was threatened with the application of electricity. The ill-treatment ceased once she decided to give a declaration on the last day of her incommunicado detention. The allegations of ill-treatment, including the sexual abuse and threats of application of electricity, were recorded in the reports of the forensic doctor at the time of the third and fourth medical checks.

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<sup>10</sup> In this and the previous case, the relevant sentence is as follows: “Desde el punto de vista Médico-legal si reúne condiciones para prestar declaración”.

15. The information gathered in the course of the 2011 visit highlights once again the need for determined action by the authorities to address the issue of ill-treatment by members of the Guardia Civil in the context of incommunicado detention. The CPT has been drawing the Spanish authorities' attention for some two decades to the problem of ill-treatment by the Guardia Civil of persons suspected of offences referred to in Article 384 *bis* of the CCP. In 1994 and 1997, the Committee recommended that a thorough and independent investigation be carried out in relation to this matter. However, those recommendations were never properly complied with. The facts found during the 2011 visit indicate that the above-mentioned problem remains unresolved.

**The CPT calls upon the Spanish authorities to carry out a thorough and independent investigation into the methods used by members of the Guardia Civil when holding and questioning persons arrested as presumed participants in one or more of the offences referred to in Article 384 *bis* of the CCP. The CPT wishes to receive within three months a full account of action taken to implement this recommendation.**

16. The CPT has, in the past, referred to the criteria necessary for an investigation into alleged ill-treatment to be considered effective<sup>11</sup>. However, from the information gathered by the CPT's delegation, it would appear that whenever allegations of ill-treatment are raised by persons held under incommunicado detention, they are systematically considered as unreliable and to be part of a defence strategy to undermine the declaration drawn up towards the end of the incommunicado regime.

From an examination of the documents made available to the CPT's delegation, it is clear that elements indicating the possibility of ill-treatment during the incommunicado detention were not pursued by the judicial authorities. For example, in at least ten of the reports relating to the persons who had been held in 2011 under incommunicado detention, the relevant forensic doctor had recorded allegations of ill-treatment and brought them to the attention of the relevant investigative judge. However, in no case was any action taken to investigate the alleged coercion or ill-treatment.

**The CPT reiterates its recommendation that whenever persons allege ill-treatment by law enforcement officials, the prosecutor/judge should record the allegations in writing, order immediately a forensic medical examination (for cases where a forensic examination is not automatically provided) and take the necessary steps to ensure that the allegations are properly investigated.**

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<sup>11</sup> See CPT/Inf (2004) 28, paragraphs 31 to 36.

c. action taken by the Spanish authorities following the 2007 visit

i. *incommunicado detention of minors*

17. In the course of the 2011 visit, the CPT's delegation was able to verify that no minor had been placed in *incommunicado* detention since 2007, as recommended by the Committee in its report on the 2007 visit. The General Prosecutor was confident that the Circular issued on 23 November 2007, recommending the non-application of Article 17 (4) of the Law on the Criminal Responsibility of minors on this specific topic, would have a lasting effect. However, the Instructions 12/2007 of 14 September still provide for the *incommunicado* detention of a minor (Part V) and only states that the Minors' Prosecutor should be informed of such a situation. To avoid the possibility of such a development, **the CPT considers that the positive development not to apply *incommunicado* detention to minors should be made permanent through amending the relevant primary legislation.**

ii *specific safeguards vis-à-vis persons held in incommunicado detention*

18. In the report on the 2007 visit, reference is made to a set of variable measures<sup>12</sup> systematically adopted by two investigative judges of the Audiencia Nacional, which provide for specific safeguards to apply to persons held under *incommunicado* detention, as from the moment it is authorised<sup>13</sup>. The safeguards consist of: the notification to the family regarding the fact of detention and the detained person's whereabouts; the possibility of being visited by a personal doctor together with the forensic doctor appointed by the investigative judge; 24-hour video surveillance and recording of the detention areas.

At the time of the 2011 visit, three of the six investigative judges of the Audiencia Nacional were systematically applying these measures. However, the delegation noted that during the first five months of 2011 all the *incommunicado* detentions were authorised by a judge who does not apply any of these safeguards; a rather surprising state of affairs.

The President of the Audiencia Nacional was of the opinion that the application of these measures could be considered as a valid safeguard and deterrent against ill-treatment during the period of *incommunicado* detention; however, he confirmed that these measures are not binding and that their application cannot be imposed on an investigative judge.

The CPT's delegation was informed that the Government was now considering legislative changes aimed at strengthening safeguards for persons held under *incommunicado* detention in the context of the pending reform of the CCP<sup>14</sup>.

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<sup>12</sup> These measures are often reported as a "Protocol".

<sup>13</sup> See CPT/Inf (2011) 11, paragraph 25.

<sup>14</sup> The same approach was announced in the context of the discussion on the Spanish Government Human Rights Plan on 12 December 2008, which envisages a number of mechanisms intended to strengthen the safeguards for *incommunicado* detainees. However, the announced measures have not yet been enacted.

By contrast, in the Basque Country, a regulative framework on access to safeguards during incommunicado detention, was adopted in 2003 by the Department of Interior in order to coordinate the activities of the Basque Police, the Basque Health Service and the Basque Institute of Legal Medicine. This framework, adopted without amending the relevant legislation, offers the same safeguards of those applied by certain investigative judges of the Audiencia Nacional and was applied to all persons held under incommunicado detention in operations conducted by the Basque Police Ertzaintza.

**The CPT recommends that necessary steps be taken to ensure that the three specific safeguards referred to above are applied vis-à-vis all persons held in incommunicado detention.**

*iii incommunicado detention orders and extensions of the custody period*

19. The CPT considers that incommunicado detention should be an exceptional and limited measure, resorted to when complex and secret investigations require the physical isolation of suspects for reason of internal public order and stability. The Spanish Constitutional Court has also stressed the necessity for incommunicado detention decisions to be legally reasoned, and its application scrutinised by the investigative judge.<sup>15</sup>

However, an analysis of the orders for incommunicado detention issued in the course of the first few months of 2011 indicated that the judge concerned did not make a rigorous examination of the need for that measure. In particular, the legal arguments were repetitive and displayed a certain degree of routine in endorsing the incommunicado requests made by the Guardia Civil whenever the criminal offence at stake relates to an act of terrorism.

**The CPT would appreciate the comments of the Spanish authorities on the above remarks.**

20. The CPT wishes to stress, once again, that all persons suspected of offences referred to in Article 384 *bis* of the CCP should be seen physically by the relevant judge prior to a decision to extend the custody period beyond 72 hours. Such an approach is essential for the prevention of ill-treatment (and quite arguably necessary to ensure compliance with Article 5, paragraph 3, of the European Convention on Human Rights). However, the Spanish authorities have not addressed the issue in their response to the report on the 2007 visit; instead, they have emphasised the right of the investigative judge to exercise his supervision by requesting information or even visiting the detained person at any moment during the period of incommunicado detention. Leaving aside the fact that, in practice, judges do not carry out such visits, requiring the person held in incommunicado detention to be brought physically before the judge at the moment when an extension of the detention period is being considered would represent an important safeguard against ill-treatment.

**The CPT reiterates its recommendation that persons subject to the provisions of Article 520 *bis* of the CCP be systematically brought physically before the competent judge prior to the taking of a decision on the extension of the period of custody beyond 72 hours. If necessary, the relevant legislation should be amended.**

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<sup>15</sup> See in particular Spanish Constitutional Court decisions 127/2000 and 7/2004.

iv. *access to a lawyer*

21. The 12/2007 Instructions confirm that an ex officio lawyer will be appointed by the Audiencia Nacional for any person placed in incommunicado detention. However, they make clear that a detained person does not have the right to speak with that lawyer, even once the declaration to the law enforcement officials has been made. The Spanish authorities affirm that these limitations on the right of access to a lawyer are justified in light of the nature of the offences referred to in Article 384 *bis* of the Criminal Procedure Code.

All persons interviewed by the CPT's delegation confirmed that they were not, in practice, provided with effective access to an ex officio lawyer until they were brought before the Audiencia Nacional investigative judge on the last day of their detention. Even on that occasion, they were not allowed to have a prior consultation with the lawyer. The ex officio lawyer was required to remain silent when the detained person made his formal statement to the Guardia Civil. This confirmed by an "incident" (*diligencia previa*) recorded on 17 December 2008 by the relevant Guardia Civil official because the duty lawyer intervened while her client was making his declaration. The Guardia Civil official chairing the session apparently charged the lawyer with breaking the incommunicado detention and in his written report stated that "the lawyer had been repeatedly informed that she could not intervene during the session"<sup>16</sup>.

In sum, there has been no improvement in the right of access to a lawyer since the 2007 visit. The CPT remains of the firm view that there can be no reasonable justification for not allowing a person to speak with a duty lawyer in private, as from the outset of police custody and thereafter as required, including prior to the hearing at the Audiencia Nacional.

**The CPT reiterates its recommendation that the Spanish authorities take the necessary steps to ensure that persons detained incommunicado are allowed to meet a lawyer in private, from the outset of their detention and thereafter as required. They should also be entitled to the presence of a lawyer during any questioning by law enforcement officials.**

v. *access to a doctor, including of one's own choice*

22. Persons detained under the incommunicado regime are visited by a forensic doctor appointed by the Audiencia Nacional usually twice a day, as specified in the orders of incommunicado detention issued by the relevant investigative judge.

In its previous visit reports, the CPT has stressed the importance it attaches to forensic doctor's reports during incommunicado detention and has put forward suggestions to improve the current system. A review of the medical reports concerning persons met by the CPT's delegation, in the course of the 2011 visit, revealed that these reports were now more descriptive. However, the concerns expressed by the CPT after the 2007 visit persist. To begin with, as was the case in 2007, the forensic doctor appointed by the Audiencia Nacional is not requested to produce a proper forensic medical report in writing. The doctor is requested to deliver orally his report in a question-and-answer session before the court, and a transcription of the doctor's statement signed by the doctor, appears in the judicial file. The CPT expressed its concerns about this practice and recommended that written forensic medical reports be produced by the doctor and delivered to the judge. **That recommendation should be implemented without further delay.**

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<sup>16</sup> *Diligencia para hacer constar*, on 18 December 2008, at 2 a.m. concerning the duty lawyer no. 57482, Bar Association of Madrid.

**Further, there should always be a conclusion by the doctor as to the consistency of the findings with any allegations made.**

Moreover, the CPT has noted that in seven out of the eleven cases examined, the forensic doctor only wrote down that the detained person was “from the forensic medical point of view fit to give a declaration” on the day before the declaration was made. Such a practice indicates that the doctors were aware of the time schedule for the interrogation process. **It would be preferable that the doctors commented after each examination whether there were any contra-indications to a detained person providing a statement.**

23. In its report on the 2007 visit, the CPT welcomed the development in the set of measures applied by certain investigative judges of the Audencia Nacional, to allow persons held incommunicado to enjoy the possibility to receive daily visits from their own doctor, accompanied by a forensic doctor appointed by the Court. Regrettably, no progress has been made to introduce this approach for all persons held under incommunicado detention. In this connection, **reference should be made to the recommendation already made in paragraph 18 of the present report.**

*vi. interrogation procedures*

24. In addition to the specific forms of ill-treatment referred to in paragraph 14, the persons arrested during the January, March and April 2011 operations by the Guardia Civil with whom the delegation met stated that they were questioned for hours on end without interruption. Further, they all alleged that, in the course of interrogations, they were obliged to stand for extended periods, while hooded or blindfolded. The authorities confirmed that detainees were hooded during interviews and the records showed that interview sessions frequently lasted for hours. The CPT’s delegation also observed on CCTV recordings that detained persons, while being moved from their cell to the interrogation room, to the doctor’s room or to the toilet, were hooded, and had to walk backwards. The CPT wishes to express its serious misgivings concerning this practice.

The CPT has in the past made clear its strong objections to law enforcement officials blindfolding or hooding apprehended persons, given that the purpose of such a practice is most often to prevent such persons from being able to identify law enforcement officials who inflict ill-treatment upon them. Even in cases where no ill-treatment occurs, to blindfold a person in custody is a form of oppressive conduct, the effect of which on the person concerned will frequently amount to psychological ill-treatment.

From the information gathered by the CPT’s delegation it is clear that the provisions of Instructions 12/2007 referred to above were not being respected. Notably Part III, paragraphs 8 and 9, of the Instructions state that any form of physical or psychological coercion of the detained person concerning his/her declaration is strictly forbidden and that regular breaks should be made during the interrogation.

25. The CPT is well aware of the extensive rules and regulations governing the behaviour of law enforcement officials, notably the Organic Law 2/1986 on Law Enforcement Bodies and Agencies, Organic Law 12/2007 on the disciplinary regime of the Guardia Civil and the above-mentioned Instructions 12/2007. However, in practice, interrogations are often not being carried out in respect of these rules. Among other matters, the following points need to be addressed: informing the detainee of the identity (name and/or number) of those present at the interview; the permissible length of an interview; rest periods between interviews and breaks during an interview; places in which interviews may be conducted. It should also be required that a record be systematically kept of the time at which interviews start and end, of any request made by a detained person during an interview, and of the persons present during each interview.

**The CPT calls upon the Spanish authorities to establish a code of conduct for interviews, building on the existing rules and regulations. Further, the blindfolding or hooding of persons who are in police custody, including during interviews, should be expressly prohibited. Similarly, the code should expressly prohibit forcing detained persons to conduct physical exercises or to stand for prolonged periods.**

*vii. custody records and video surveillance*

26. As was the case in the past, the custody registers examined by the CPT's delegation at Calle Guzman el Bueno for the period February 2010 to April 2011 lacked most of the details required. In particular, signatures by Guardia Civil officers responsible for a movement or an event pertaining to a detained person were missing in the majority of the cases examined; transfers and movements were also not recorded and there were no entries recorded at all for lengthy periods of time; no references were made to the provision of food, water and access to toilets; even notable incidents appeared not to have been recorded, such as the hospitalisation of one person on 3 March 2011.

The CPT's delegation was able to examine video surveillance material relating to a previous incommunicado detention period at Calle Guzman el Bueno. It was noticeable that the video cameras only covered part of the corridor outside each cell and that the interrogation rooms and the cells were not under video surveillance. For video recording to be an effective safeguard against ill-treatment, it should cover all parts of the detention area, including the interrogation rooms and the cells. Further, the audio recording of interrogation sessions would permit the veracity of allegations of ill-treatment to be examined by the judiciary, defence lawyers and other relevant authorities.

**The CPT recommends once again that the Spanish authorities take the necessary steps to ensure that record-keeping in the context of incommunicado detention by law enforcement officials is substantially improved. Further, the application of video and audio recording should be extended, in the light of the foregoing remarks.**

*viii. judicial scrutiny*

27. The role of the courts in the prevention of ill-treatment has been the object of detailed analysis and recommendations by the CPT in previous visit reports<sup>17</sup>. The findings of the 2011 visit indicate that there continues to be a lack of proper judicial oversight of persons held in incommunicado detention during the first 120 hours of custody.

28. All persons interviewed by the delegation stated that their hearing in front of the Audiencia Nacional on the fifth day of detention was their first contact with the judicial authorities. Prior to this hearing, Audiencia Nacional investigative judges apparently consider the forensic doctor's reports to be sufficient for the purposes of monitoring the conditions of detention and the conduct of Guardia Civil officers. That said, in those instances where the forensic doctor recorded complaints of ill-treatment, the investigative judge did not exercise his power to visit the person concerned and check the veracity of the allegations.

**The CPT reiterates once again its recommendation that the General Council of the Judiciary encourage judges to adopt a more proactive approach in respect of the supervisory powers granted to them by Article 520 *bis*, paragraph 3, of the CCP.**

29. Further, several persons who alleged ill-treatment at the hearing before the Audiencia Nacional, described the attitude of the investigative judge as dismissive. In one case, the investigative judge apparently referred to the allegations as pre-fabricated and stimulated by outside influence and made no attempt to pursue the matter.

**In this regard, it should be recalled that Spanish law obliges a judge confronted with allegations of ill-treatment either to open a preliminary inquiry or to refer the matter to another competent court.** Reference should also be made to the recommendation in paragraph 16 above.

d. conditions of detention

30. The situation of persons placed in incommunicado detention is aggravated by the conditions in the detention cells at the Guardia Civil establishment of Calle Guzman el Bueno. The eight single-occupancy cells still had no access to natural light, and ventilation remained poor and artificial lighting inadequate. As stated in the CPT's report on the 2007 visit, the configuration of the detention area and the stark conditions contributed to make the cells oppressive. In response to the report on the 2007 visit, the Spanish authorities announced that they would refurbish the detention area in line with CPT requirements. However, the cells at Calle Guzman el Bueno had not been renovated, and yet they have continued to be used to hold almost all persons detained incommunicado following operations conducted by the Guardia Civil.

**The CPT calls upon the Spanish authorities to proceed without further delay with the refurbishment of the detention cells at Calle Guzman el Bueno. The CPT wishes to be informed within three months of the action taken.**

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<sup>17</sup> See in particular CPT/Inf (2007) 30, paragraphs 32 to 47 and 53 to 57.



31. The detention area reserved for persons placed under incommunicado detention at the headquarters of the Basque Police (Ertzaintza) in Arkaute consisted of seven single-occupancy cells (each measuring some 8m<sup>2</sup>). The cells were equipped with a concrete plinth and a mattress; however, they had no access to natural light, and two of the cells did not possess artificial lighting in working order. Further, each cell was secured by two thick metal doors, rendering it impossible for a detained person to attract the attention of custodial staff in case of need, especially as there were no call bells.

**The CPT recommends that immediate steps be taken to remedy these deficiencies; all cells should be equipped with a call bell and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded).**

32. In none of the establishments visited, in which persons could be held under incommunicado detention, were there facilities for outdoor exercise. **The CPT recommends that arrangements be made so that persons detained for more than 24 hours can be offered outdoor exercise every day.**

### **3. Ordinary custody**

#### **a. ill-treatment**

33. The vast majority of persons with whom the CPT's delegation spoke stated that they had been treated correctly by law enforcement officials when deprived of their liberty. However, the delegation did receive a few allegations of ill-treatment, in particular of excessive use of force at the moment of apprehension.

For example, a person detained in the Moratalaz National Police Station stated that in the course of being apprehended he was pushed to the ground and kicked, and that handcuffs were applied too tightly. At the time of the visit, one day later, red marks around his wrists were visible.

A woman interviewed at the Aluche Centre for Foreign Nationals, alleged that when she was apprehended at Oviedo bus station on 31 May 2011, a policeman had delivered multiple baton blows to her body. When the CPT's delegation met her some twelve days later, she displayed bruises on the outer side of her left thigh, left forearm and upper arm, the back of her left knee and on her right knee. She also alleged that she had been verbally abused.

Another person alleged that he had been slapped and forced to do physical exercises by officers at the Córdoba National Police Station in an attempt to extract an object that he had apparently introduced into his body.

**The CPT recommends that the Spanish authorities remain vigilant in their efforts to combat ill-treatment by law enforcement officials. In particular, these officials should be reminded that no more force than is strictly necessary should be used when effecting an apprehension and that, once apprehended persons have been brought under control, there can never be any justification for striking them.**

34. It should also be noted that the CPT's delegation found a number of unlabelled items such as sticks and baseball bats in rooms where detained persons may be interviewed in the premises of the National Police Stations of Cádiz, Puente de Vallecas and Moratalaz District in Madrid. Apart from inviting speculation about improper conduct on the part of police officers, objects of this kind are a potential source of danger to staff and criminal suspects alike. Items of property seized during criminal investigations should be entered in a separate register, properly labelled (identifying the case to which they refer) and stored in a dedicated property store. **The CPT recommends that all unauthorised items be removed from the premises where persons may be held or questioned.**

b. safeguards against ill-treatment

35. The CPT's delegation reviewed the operation in practice of the safeguards offered to persons deprived of their liberty. In particular it assessed the implementation of the September 2007 Instructions (12/2007), which provide a clear reminder to law enforcement officials concerning the fundamental safeguards to be offered to all persons deprived of their liberty (see paragraph 10 above).

i. *notification of custody*

36. Most of the detained persons with whom the delegation spoke stated that they had been asked by the police whether they wanted someone to be informed of their situation when they were brought to the police station.

However, from an examination of the *ficha de derechos* (see also paragraph 10) it was difficult to know whether the detained person had been able to exercise this right, and if so at what time the person of choice had been contacted. In addition to the ticking of a box by a law enforcement official, the detained person should be requested to countersign that he or she has been able to exercise the right of notification. Further, the time of notification should be recorded. **The CPT recommends that steps be taken to ensure compliance with these requirements.**

ii. *access to a lawyer*

37. The CPT recalls that in its experience it is during the period immediately following the deprivation of liberty that the risk of intimidation and ill-treatment is at its greatest. Consequently, the possibility for persons taken into police custody to have access to a lawyer during that period is a fundamental safeguard against ill-treatment. Access to lawyer in the course of ordinary detention in Spain appeared to have improved since the previous visit in 2007. Most persons met stated that they had had the possibility to contact a lawyer while being held in police custody, usually several hours after the arrest.

The 12/2007 Instructions stipulate that a detained person who requests legal assistance should be provided with access to an ex officio lawyer in the “shortest possible period”; if the lawyer does not appear within three hours, a reminder call should be made. This is a positive development. However, in practice it appears that in most cases ex-officio lawyers attend the police station only after many hours have elapsed.

**The CPT recommends that steps be taken, if necessary in consultation with the Bar Associations, to ensure that ex officio lawyers attend police stations promptly.**

*iii. access to a doctor*

38. From the findings of the CPT’s delegation, access to a doctor was on the whole guaranteed. Persons met stated that they were promptly brought to an emergency health-care centre, upon request for medical assistance. Such a practice was confirmed by the relevant custody records.

However, the right of access to a doctor of one’s choice is still not provided for in Spanish law. **The CPT recommends that such a right be adequately reflected in law.**

*iv. information on rights and custody records*

39. Instructions 12/2007 recall that apprehended persons should be immediately provided with information on their rights, in a language they can understand; it also requires all police stations to possess printed information sheets on these rights. However, many persons met by the CPT’s delegation claimed that they were not informed of their rights either verbally or in a written form. Further, the Instructions do not provide that persons be requested to attest in writing that they have been informed of their rights. Consequently, the *ficha de derechos* does not provide for a detained person’s signature attesting to the information on his/her rights having been given.

**The CPT recommends that law enforcement officials be reminded to inform apprehended persons of their rights in a language they understand. Further, instructions should be issued providing for detained persons to attest in writing that they have been informed of their rights.**

40. In accordance with Instructions 12/2007, each custody record is composed of three sections: information on the individual, including on the arrest, crime and related data; a record of all events occurring during detention; and the *ficha de derechos*.

The CPT’s delegation found that in several law enforcement establishments, the registers were not filled out properly. For example, in Puente de Vallecas National Police Station in Madrid, the times of apprehension and placement in a detention cell were not recorded accurately. Further, the records did not state what happened to a person after they had spent 72 hours in detention. **The CPT recommends that the necessary steps be taken to ensure that all custody records are diligently filled out.**

41. As regards the computerised custody record system in place at the headquarters of the Basque police (Ertzaintza), the CPT's delegation found that it still did not permit basic verifications which would be useful when assessing the treatment of detained persons. Despite waiting for several hours to obtain the correct password, it was not possible for the delegation to gather information on, for example, the occupancy level in stations, the number of minors held in detention, the length of detention, access to a doctor or to a lawyer, provision of food, the identity of detained persons. The CPT considers that in order to resolve this problem, the relevant authorities should grant appropriate access rights, on a need-to-know basis, to persons performing a monitoring role. **The CPT invites the Spanish authorities to act accordingly.**

c. conditions of detention

42. Material conditions in the Madrid Guardia Civil stations of Tres Cantos (eight single-occupancy cells each measuring some 7m<sup>2</sup>) and Las Rozas (four single and three double-occupancy cells) were on the whole acceptable. All cells were equipped with a plinth and mattress, and artificial lighting and ventilation were sufficient. However, **the cells in both stations lacked access to natural light. Further, the CPT recommends that they be equipped with a call bell.**

43. As regards the National Police stations visited, conditions of detention were acceptable in Cadiz and at the Central Registry of detained persons of Moratalaz, Madrid. The CPT's delegation was also able to observe the investments made by the authorities following the 2007 visit to improve conditions, such as the refurbishment of the detention cells at Puente de Vallecas Police Station in Madrid. In general, the cells in the stations visited were of an adequate size, and were equipped with a concrete plinth and a mattress.

However, poor ventilation remained problematic, in particular in the stations of Moratalaz and Puente de Vallecas in Madrid and Puerto Santa Maria. Further, the absence of call bells in certain establishments, such as Moratalaz, meant that officers could not hear a detained person who wished to attract their attention. **The CPT recommends that these shortcomings be remedied. Further, it would be preferable for the cells to enjoy better access to natural light.**

Conditions of detention at the Barcelona District Headquarters (Via Laietana), have not improved since the 2007 visit; the cell area remains dingy with no access to natural light, dim artificial lighting and poor ventilation. **The CPT recommends that steps be taken without further delay to improve conditions of detention in this establishment.**

44. The detention premises of the four single occupancy cells for ordinary detention at the headquarters of the Basque Police (Ertzaintza) in Arkaute provided on the whole acceptable conditions. The cells (some 7m<sup>2</sup>) were equipped with a plinth and a mattress, and the artificial lighting and ventilation were adequate; however, **the cells had no access to natural light.**

45. In none of the establishments visited were there facilities for outdoor exercise for persons detained more than 24 hours. In this connection, **reference should be made to the recommendation already made in paragraph 32 of the present report.**

## **B. Prison establishments**

### **1. Preliminary remarks**

#### a. prison overcrowding

46. The prison system in Spain has been afflicted by significant overcrowding for a number of years. The Spanish authorities have invested considerable resources to tackle this phenomenon, notably through the construction of new prison establishments. At the time of the CPT's 2011 visit, the number of persons imprisoned in Spain (excluding Catalonia) stood at 62,300, for an official capacity of 55,421 (with an occupancy level of 112 percent). This represents an improvement as compared to the situation observed in 2007 (when the prison occupancy level stood at 143 percent), despite an increase in the prison population of 9% during the intervening period.

The CPT's delegation was informed by the Spanish authorities that they intended to tackle prison overcrowding through the creation of an additional 18,000 places (9,000 double occupancy cells) within the next few years, with a focus on the continued construction of large prisons<sup>18</sup>. The authorities are also placing much emphasis on developing open prisons as a means of assisting inmates' re-integration into society.

The CPT nevertheless considers that in order to provide a lasting solution to the problem of prison overcrowding, the authorities should invest more efforts in promoting alternative sanctions.

**The CPT reiterates its recommendation that the Spanish authorities continue to pursue policies designed to put an end to overcrowding in prisons, having regard *inter alia* to the principles set out in Recommendations R (99) 22 and R (2003) 22 as well as other pertinent Recommendations of the Council of Europe's Committee of Ministers<sup>19</sup>.**

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<sup>18</sup> The current prison development programme (2005-2012) envisaged 32 new Centres for social re-integration and five Centres for mother-child accommodation; at the time of the visit, the number of new Centres opened stood at 20 and three respectively.

<sup>19</sup> See, for example, Recommendation R (2000) 22 of 29 November 2000 on improving the implementation of the European rules on community sanctions and measures.

b. prisons visited

47. The CPT's delegation conducted a comprehensive visit of Madrid IV Prison. It also carried out targeted visits to Puerto III, Nanclares de la Oca and Córdoba Prisons in order to examine the use of means of restraint, the conditions of detention in special departments and disciplinary matters.

**Madrid IV Prison (Navalcarnero)**, located on the eastern outskirts of Madrid, was built in 1992 and was accommodating 1,319 male inmates (of whom 200 were on remand) for a total capacity of 1,367, at the time of the visit. The establishment consists of 11 modules leading off a central rectangular courtyard.

**Puerto III Prison**, near Puerto Santa Maria in Andalusia, was inaugurated in 2007 and follows the architectural design of all new prison establishments in Spain; i.e. 14 two-storey modules each containing 72 cells and a separate module (Module 15) for the special department. Two of the modules accommodated female prisoners and one module held young male adults (18-21 years). At the time of the visit, the establishment was holding around 1,500 sentenced and 90 remand prisoners (of whom 170 were female) for an official capacity of 1,008<sup>20</sup>.

**Nanclares de la Oca Prison**, near Vitoria, was described in the report on the 2007 visit; at the time of the visit, it was holding 667 sentenced (592 men and 75 women), and 66 remand prisoners (59 men and seven women), for a capacity of 720. However, the establishment was scheduled to close following the inauguration on 21 September 2011 of Araba/Álava Prison, in Iruña de Oca; **the CPT would like to be informed about the timetable for the transfer of inmates from Nanclares de la Oca to the new prison.**

**Córdoba Prison**, inaugurated in 2008, has a similar design and layout to Puerto III Prison; at the time of the visit, it was accommodating 1,507 sentenced and 130 remand prisoners (of whom 80 were female), for an official capacity of 1,008.

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<sup>20</sup> The official capacity of new prison establishments such as Puerto III corresponds to the number of cells (i.e. 1,008). However, in many modules the nominally single-occupancy cells accommodated two inmates.

## 2. Ill-treatment

48. At *Madrid IV Prison*, most persons with whom the CPT's delegation spoke made no allegations of ill-treatment by staff. However, in Module 5, which accommodated prisoners deemed to be conflictual, a few allegations of ill-treatment by staff (slaps and kicks) were received.

49. A number of allegations of ill-treatment of inmates by staff were received in the other prisons visited. The alleged ill-treatment consisted of punches and kicks and concerned primarily those inmates either transferred to or accommodated in special departments. The situation in *Puerto III Prison* was particularly worrying; there was a palpable tension within the establishment, and several inmates met by the CPT's delegation expressed their fear of reprisals by staff for having spoken with the delegation. Prisoners in almost all the modules visited by the delegation alleged ill-treatment by staff, which apparently took place in rooms adjacent to the medical consultation area on the ground floor of the respective module - the only area not covered by CCTV. In the special department (Module 15) ill-treatment appeared to be particularly problematic, especially at night, in respect of those inmates who were kept in isolation for disciplinary purposes or deemed unadapted for community life. For example:

i). An inmate whom the delegation met in Module 15 claimed that on 20 April 2011, following a family visit, the duty officer accused him of possessing drugs, and requested the inmate to do a number of push-ups. He alleged that, due to his refusal, he was punched and brought to the infirmary where, according to the register, he was tied to a bed from 6.00 a.m. to 10.45 a.m. (medical restraint), and a catheter forcibly inserted into his penis in order to obtain an urine sample. Subsequently, a prison officer asked a nurse to remove the catheter as he was urinating blood. The inmate was brought back to Module 15, where he alleged he was punched and kicked and fixated to a bed from 5.30 p.m. until 10 a.m. the following morning (regimental restraint). He said that while being fixated he was repeatedly punched by a prison officer.

The Committee is particularly concerned by the fact that the inmate was fixated in the prison infirmary as a security measure with the active participation of health-care staff, and that a humiliating and potentially damaging forcibly intrusive procedure to obtain an urine sample was administered. This latter measure is a clear violation of medical ethics and may well amount to inhuman and degrading treatment<sup>21</sup>.

ii). Another inmate reported that on 2 June 2011, following a fight with an inmate, he was separated and moved to Module 15. He alleged that during his transfer he was kicked and subjected to blows with a truncheon and that he was again beaten after he was placed in a cell. The next morning he was examined by a doctor and the following injuries were recorded: "circular haematoma of about 7-8 cm diameter on his right leg, other bruises on his left leg". The delegation's doctor examined the inmate on 6 June and, in addition to the above-mentioned bruises, noted a swollen bruised right hand as well as several small bruises and scratches on the front side of both lower legs. A lacero-contusion on the left knee with one stitch was reportedly inflicted during the fight with the other inmate.

50. **The CPT recommends that the Spanish authorities once again deliver a clear message**

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<sup>21</sup> Reference might also be had to the judgment of the European Court of Human Rights in the case of *Jalloh vs. Germany* of 11 July 2006, in which the Court addressed the question of forcible medical intervention for the purpose of obtaining evidence.

**to all prison officers that all forms of ill-treatment, including verbal abuse, are not acceptable and will be the subject of severe sanctions. Specific measures should be taken to ensure that prison staff at Puerto III Prison do not abuse their authority when performing their duties. Further, an investigation should be undertaken into the case referred to in paragraph 49.i) above.**

**In addition, steps should be taken to ensure that prison officers are provided with training in recognised control and restraint techniques.**

### **3. Conditions of detention**

#### a. introduction

51. Articles 100 to 109 of the Prison Regulations (1996) provide for three categories of regime: closed (first degree), ordinary (second degree) and open (third degree). In practice, the vast majority of prisoners entering the prison system will spend a few days in an admission unit where they will be assessed, categorised as second degree inmates and placed in an ordinary regime module<sup>22</sup>. A limited number of sentenced prisoners are classified as first degree inmates upon admission to prison and placed under a closed regime in special departments<sup>23</sup>. Remand prisoners may also be placed in special departments under a closed regime on the basis of the specific nature of the crime with which they are charged, notably for belonging to an armed organisation. Further, an inmate may be re-classified from second to first degree if it is demonstrated that he/she is unadapted to prison life or dangerous to themselves or to others.

Progression to third degree usually resulted in an inmate being placed in an open regime unit or centre.

The classification process of an inmate is based upon a proposal by the prison treatment board<sup>24</sup> (Junta de Tratamiento) and endorsed by the Secretary General for Penitentiary Institutions. The classification is reviewed every six months.

52. In each prison visited there was at least one module designated as being for “conflictual” prisoners. The conditions of detention in these modules were supposedly the same as in other modules but the delegation found that the regime, as well as the overall atmosphere, was particularly impoverished. Inmates in these units did not appear to have the same opportunities of access to activities (whether work, education or recreation) as prisoners in other modules. Placement in a “conflictual” module was perceived by inmates as a punitive measure, an opinion echoed by several prison officers interviewed by the delegation. Indeed, many thought that it served as an additional informal classification, from which it was difficult to progress.

**The CPT would appreciate the comments of the Spanish authorities on the above remarks.**

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<sup>22</sup> Article 102 of the Prison Regulations provides for the possibility of adopting elements of different regimes to specific inmates, with the approval of a Supervisory Judge.

<sup>23</sup> At the time of the visit, some 830 inmates were being held in special departments (i.e. 1.6% of the total prison population, down from 2.7% in 2007) .

<sup>24</sup> The Board is chaired by the prison director and is usually composed of the deputy director for treatment, the head of medical services and a pedagogue, an educator and a senior prison officer.



b. regime

53. As mentioned above, the vast majority of prisoners were classified as second degree and placed on an ordinary regime. These prisoners spent most of the day (i.e. from 8 a.m. to 2 p.m. and from 4.30 p.m. to 9 p.m.) outside their cells, either in the common areas of their respective modules or engaged in an organised activity. During the day, the cells are locked and prisoners are not allowed access to them.

In Madrid IV Prison, some 250 inmates were offered a paid activity with external contractors (such as manufacture of furniture and plastic hangers). Further, a wide range of educational courses (from basic English and Spanish language courses up to university level) were run in co-operation with the Ministry of Education and were attended by some 450 inmates. Special rehabilitation programmes were also offered (e.g. for drug addicts, sex offenders, disabled inmates and for those serving sentences for gender-related crimes). That said, the delegation received many complaints from prisoners in Module 5 (which accommodated “conflictual” prisoners) that they were not offered any purposeful activities; some alleged that their applications to attend educational courses had been denied.

At Puerto III Prison, a similar range of activities was on offer. It was noted that several vocational courses and programmes had been implemented, with the support of the European Union Social Fund, with the possibility to obtain a recognised certificate. However, due to the lack of external contractors, few inmates were employed in the workshops.

In Nanclares de la Oca Prison, about 175 inmates were engaged in work programmes and educational programmes based on agreements with selected external companies and associations. Efforts to increase the number of prisoners involved in purposeful activities were evident.

**The CPT recommends that the Spanish authorities pursue their efforts to provide prisoners with a range of purposeful activities.**

c. material conditions

54. The material conditions in the modules visited in Madrid IV Prison were, in principle, acceptable. Each module contained 75 cells, measuring some 8 m<sup>2</sup> and designed for single-occupancy, a sizeable yard for outdoor exercise, a large association room, with a television and board games, and a classroom for educational activities on the first floor. Every cell was equipped with a bed, table and chair and shelves for personal belongings as well as with a partially partitioned sanitary facility. Access to light and ventilation was adequate in all modules visited.

However, some of the cells were accommodating two inmates. Both the limited size of the cell and the design of the sanitary facilities rendered them unsuitable for such an occupancy rate. Further, the material conditions in Module 5 were somewhat dilapidated, in particular the common areas.

In Puerto III Prison, the cells (measuring some 10m<sup>2</sup> and designed for single-occupancy) in each module were suitably equipped. All modules possessed a yard for outdoor activities, a medical room, a classroom and a shop, and were in a decent state of repair. However, many of the cells were accommodating two inmates and the sanitary facilities were not fully partitioned.

**The CPT recommends that efforts be made to avoid placing two inmates in cells designed for single-occupancy. This is particularly important at Madrid IV Prison given the limited size of the cells. Further, in any cell accommodating more than one inmate, the in-cell sanitary annexe should be partitioned to the ceiling.**

55. The delegation had an opportunity to visit the site of the new prison in Iruña de la Oca, which will replace Nanclares de la Oca Prison. The new prison will offer very good conditions of detention and has introduced greater flexibility in the use of available spaces for activities and association compared to the standard layout in most Spanish prisons.

d. *“modulos de respeto”*

56. The CPT delegation visited the so called “modulos de respeto” (respect modules) in Madrid IV and Puerto III Prisons. “Modulos de respeto” accommodate inmates who have committed themselves to a set of behavioural rules<sup>25</sup> in return for enjoying some elements of self-management within the module in co-operation with other inmates. The aims of the “*modulos de respeto*” are to promote a progressive accountability of inmates as well as to enhance relations between staff and prisoners, with a view to improving the general atmosphere. The CPT supports these stated aims.

57. All second degree prisoners are eligible to apply for transfer to a “*modulo de respeto*” provided that they are not serving a disciplinary sanction and commit themselves to the statutory rules. The delegation noted that there was a more relaxed atmosphere in the “*modulos de respeto*” (inmates were, for example, allowed to spend time in their cells on their own) during the day, which facilitates their transition to an open regime and re-integration into society. However, there appeared to be a disproportionate emphasis on cleaning activities, and prisoners met by the delegation stated that they dared not make a complaint about the living conditions in the module for fear of being transferred out of the “*modulo de respeto*”.

**The CPT would appreciate the comments of the Spanish authorities on the operation of the “*modulos de respeto*”, in the light of the above remarks.**

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<sup>25</sup> The contract signed by the inmate commits him or her to: comply with the specific rules of living within a community; fulfil the activities established by the group; take part in the organisation of the unit; be polite and have good relations with fellow inmates; refrain from taking drugs and be screened for possible use of drugs whenever requested by the prison staff.

#### 4. Means of restraint

58. A main focus of the 2011 visit as regards prison establishments in Catalonia was the issue of resort to means of restraint, and in particular to fixation (see Section E.3 below). The application of fixation in a non-medical setting (i.e. what is referred to as fixation for regimental purposes<sup>26</sup>) was also examined in the prisons visited falling under the authority of the Ministry of the Interior of Spain. The delegation found that the recommendations put forward by the CPT in its report on the 2007 visit had not been fully implemented and that, once again, other means to achieve the desired outcome were not being exhausted before resorting to fixation. Further, fixation was frequently applied for prolonged periods without adequate supervision.

59. As regards the method of fixation, the CPT's delegation found that it was, on the whole, in accordance with Instruction 18/2007 (i.e. prisoners were fixated by their wrists and ankles to a bed with cloth straps, either face down or face up).

However, in Module 15 of Córdoba Prison, the delegation found that inmates were being fixated to a concrete block covered by a thin mattress with their wrists and ankles attached with metal handcuffs to rings on the side of the block<sup>27</sup>. The room, known as "*la piedra*" by staff and inmates alike, had developed a foreboding reputation as a place of punishment. The CPT's delegation invoked Article 8, paragraph 5, of the Convention and made an immediate observation that the Spanish authorities cease to use the concrete block in question and that all prison staff be reminded that handcuffs should not be used for attaching prisoners to a bed. By letter of 21 June 2011, the Spanish authorities responded to the immediate observation indicating that the concrete block had been removed and replaced with a special bed. However, no response was received concerning the request that all prison staff should be reminded that handcuffs should not be used for fixating prisoners to a bed. **The CPT recommends that such a reminder be issued to prison staff.**

60. As indicated, the CPT continues to have concerns about the frequency and duration of fixation. At Puerto III Prison, for example, 36 instances of resort to fixation were recorded during the first five months of 2011. Further, on 17 of these occasions an inmate had been kept fixated for periods overnight. For example, a female inmate at Puerto III Prison had been fixated on 8 April 2011 for 21 hours and, following a break of 9 hours, for a further 14 hours the following day<sup>28</sup>. She alleged that during the period of fixation she was not permitted to comply with the needs of nature; therefore, she urinated in her clothes. According to the medical file, no member of the health-care staff visited her during the period of fixation.

Such lengthy periods of fixation are totally unacceptable. Fixation should always be for the shortest possible time (usually minutes rather than hours).

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<sup>26</sup> According to Instruction 18/2007 resort to regimental fixation is provided for in cases where an inmate is clearly agitated and at risk of an act of self-harm or of injuring third persons or damaging objects. Instruction 03/2010 includes the provisions of Instruction 18/2007 with regard to resort to fixation and, at the same time, incorporates them into the general system of penitentiary management (S.I.P.).

<sup>27</sup> A set of metal handcuffs was attached to one of the rings at the time of the visit, as apparently the key to open them had been lost. The delegation managed to unlock the cuffs and they were subsequently removed.

<sup>28</sup> According to the register she was fixated from 12.45 a.m. on 8 April to 9.00 a.m. on 9 April and again in the same day from 6.45 p.m. to the next morning at 9.15.

61. Instructions 18/2007 and 03/2010 describe the procedure for the supervision<sup>29</sup> of inmates subjected to regimental and medical fixation as well as for the provisional cessation of the measure. Prison officers should check on a fixated inmate every hour and the head duty officer (*Jefe de Servicios*) may authorise the interruption of the fixation measure and should, according to the Instructions, take the necessary precautions such as reinforcing the number of prison officers present and ensuring the temporary application of metal handcuffs during the removal of the cloth straps; no logical explanation was provided for this latter measure at the end of a period of fixation.

However, it appeared that supervision was purely formalistic, with prison officers performing only brief visual checks once an hour. Several inmates in Puerto III and Nanclares de la Oca Prisons alleged that during their prolonged period of fixation they were not unstrapped in order to comply with the needs of nature and were not provided with food. Further, from the documentation consulted and interviews with prisoners, it appeared that doctors never examined persons undergoing fixation once they had provided a written medical authorisation for the measure. The lack of direct and continuous supervision is of deep concern to the Committee, especially in light of the fact that a number of inmates who were fixated displayed clear signs of a mental disorder.

For example, another inmate met at Puerto III Prison had been fixated in Module 15 from 1.05 p.m on 1 September 2010 to 5.30 p.m. on 2 September (a total of 28 and a half hours). There is no record of this inmate having been visited by a member of the health-care team at any stage of the fixation. Further, in the period immediately preceding his transfer from Salamanca Prison to Puerto III Prison, he had been fixated for 58 hours without interruption (from 14 to 17 August 2010). The Supervisory Judge no. 5 of Castilla and Leon considered that the measure, including its duration, was “adequate” as a means to prevent any acts of violence by the inmate. The inmate’s medical file recorded that he had been described as a patient with a “grave personality disorder”.

62. In the light of the information gathered in the course of the 2011 visit, the Spanish authorities should urgently review the current approach towards the resort to fixation in prisons and put in place far stricter rules governing its application, based upon the principles and minimum standards put forward by the CPT in paragraph 91 of its report on the 2007 visit (and which are also reflected in paragraph 128 below). In particular, fixation should only be used as a last resort to prevent the risk of harm to the individual or others and only when all other reasonable options would fail to satisfactorily contain those risks; it should never be used as a punishment or to compensate for a shortage of trained staff; it should only be used within a medical setting (i.e. in the health-care centre of a prison).

**The CPT calls upon the Spanish authorities take the necessary steps to completely review the measure of fixation, in the light of the above remarks.**

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<sup>29</sup> In the case of regimental fixation a doctor has to assess the compatibility of the fixation with the state of health of the inmate as from the moment of its application. In case of positive assessment by the doctor, prison officers should supervise the inmate subjected to fixation at least once every hour.

## 5. Prisoners detained in special departments

63. In the course of the 2011 visit, the CPT's delegation again examined the situation of inmates, both remand and sentenced, who are considered to be "extremely dangerous" or "unadapted to an ordinary prison regime" (i.e. prisoners subject to the provisions of Article 10 of the General Organic Law on Prisons and Article 91 of the Prison Regulations). The special departments visited also accommodated prisoners subjected to a disciplinary sanction (Articles 243 and 254 of the Prison Rules), to temporary isolation (Article 72.1), to a measure of security and good order due to the personal attitude of the prisoner (Article 75.1) or to a measure of protection from other prisoners or from self-harm (Article 75.2). Further, once again in 2011, it would appear that certain prisoners were also placed in special departments by virtue of their being included in the *Fichero de Internos de Especial Seguimiento* (FIES)<sup>30</sup>, although inclusion in the FIES does not imply an automatic restriction of regime and rights of the prisoner concerned.

64. The special department at Madrid IV Prison (Module 15) contained 44 cells and was accommodating 15 inmates on the day of the visit<sup>31</sup>. As regards material conditions, the cells measured some 6m<sup>2</sup> and were equipped with a bed, a table (both fixed to the ground), a sink, a toilet and a shower. Access to natural light was poor and there was no heating system in the cells; **the CPT recommends that these deficiencies be remedied.**

Further although cells of such a size might be considered acceptable for short stays such as the period of serving a disciplinary sanction, **they are scarcely adequate for prolonged periods of detention under a regime where the inmate may be confined to the cell for 21 hours or more per day.**

Material conditions were distinctly better in Module 15 of Puerto III Prison, which consisted of 5 wings of 14 cells and two cells for the purpose of fixation; it was accommodating 47 prisoners on the day of the visit<sup>32</sup>. Each cell measured some 8 m<sup>2</sup>, was suitably equipped and possessed a sanitary annex; access to natural light was adequate. Module 15 in Córdoba Prison was of the same design as that in Puerto III Prison and, at the time of the visit, was accommodating 35 inmates.

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<sup>30</sup> *Fichero de Internos de Especial Seguimiento* (register of inmates for special supervision) is an administrative database with information on the personal, judicial and penitentiary situation of prisoners, as well as the organisation to which they belong, any incidents during their detention, their criminal activity and their connections outside the prison. It is aimed at identifying and categorising potentially dangerous inmates.

<sup>31</sup> The breakdown of the 15 inmates placed in the special department at the time of the visit was as follows: two were separated under Article 91 of the Prison Regulations, four were subjected to a regime limitation measure for the good order of the prison establishment (Article 75.1), five were separated for self-protection (Article 75.2) and three were serving a disciplinary sanction (Article 254).

<sup>32</sup> The breakdown of the 47 inmates placed in Module 15 at the time of the visit was as follows: 34 were separated under Article 91 of the Prison Regulations, four were subjected to a regime limitation measure for the good order of the prison establishment (Article 75.1), two were subjected to coercive measures of temporary isolation (Article 72.1) and seven were serving a disciplinary sanction (Article 254).

65. According to Articles 93 and 94 of the Prison Regulations, the regime offered to inmates in the special units should consist of a maximum of three hours of outdoor exercise as well as a maximum of four hours of communal life. In the special departments visited, inmates were offered up to three hours of outdoor exercise (in a smaller or a bigger yard in accordance with their classification) usually with two other inmates. However, the delegation met two inmates at Puerto III Prison who took their outdoor exercise alone and were not offered any opportunity to associate with other inmates.

Further, at Puerto III Prison, apart from access to a gym once a week, no organised activities were offered to inmates in Module 15 and little support was provided to assist them to re-integrate into an ordinary regime module. Indeed, the Closed System Intervention Programme, referred to by the Spanish authorities in their response to the report on the 2007 visit as a multidisciplinary tool to progressively integrate inmates placed in a special department back into the ordinary regime, was not evident in any of the prisons visited in 2011.

**The CPT recommends that the Spanish authorities increase their efforts to develop a purposeful regime for inmates placed in special departments. Further, the Committee would like to be informed as to the reasons why the two inmates referred to above were not permitted to associate with other prisoners.**

66. The lack of activities and prolonged periods spent alone in their cells exacerbated the situation of a number of inmates who showed clear signs of mental health concerns.

For example, in Puerto III Prison, one inmate, who had been fixated several times due to his agitated state and propensity to self-harm and who had also undertaken a hunger strike, showed clear signs of mental disorder and aggressiveness towards staff. He confirmed to the delegation that when he had been on hunger strike, he had eaten the glass from the window of his cell, an action which had resulted in him being fixated. His medical file stated that he had been prescribed laxatives after it was noted that he was ingesting glass during his hunger strike. However, he was never examined by a psychiatrist during his time in Puerto III Prison and no attempt was made to ascertain whether the prolonged solitary confinement of this prisoner in the special department was resulting in a further deterioration of his mental health.

**The CPT recommends that the Spanish authorities take the necessary steps to ensure that vulnerable inmates placed in special departments are provided with proper care and treatment, and that prisoners with a mental disorder are transferred to an appropriate medical facility.**

67. At the time of the visit, it was too early to assess the impact and changes introduced by the most recent amendments to the Prisons Regulations (Royal Decree 419/2011 of the 25 March 2011) and the related Instructions on the establishment of a special team which should review the progress, if any, of inmates placed in special departments. The teams should provide three-monthly assessments to the prison treatment board which is responsible for reviewing a prisoner's classification. **The CPT would like to be informed about the practical implementation of these new measures in the special departments.**

68. The CPT's delegation noted that in several cases the decision to place an inmate in a special department, as regulated by Article 92 of the Prison Regulations, was based on the nature of the criminal offence and the perceived security threat, rather than as a result of an individual's behaviour. For example, two inmates in Module 15 of Puerto III Prison, who were classified as FIES 3, had been accommodated in that module since its inauguration in 2007. They claimed that despite complying with the three criteria set out in Article 92 for the prison treatment board to review their placement (i.e. no disciplinary sanctions, good inter-personal relations with inmates and staff, and participation in activities), they expected to remain in the special department for the duration of their sentence.

Such an approach would appear to be in contradiction with the stated policy of only placing persons in a special department due to their behaviour and, once in such a department, to work towards progressively integrating the inmates concerned into the ordinary regime. **The CPT would like to receive the comments of the Spanish authorities on this matter.**

## **6. Health care**

69. The health-care services in the prisons visited were, on the whole, of a good standard. Health-care staffing levels were generally acceptable. For example, at Madrid IV Prison, there were eight full-time general practitioners and a medical director, assisted by 12 nurses and 16 assistant nurses working on a full time basis; at Puerto III Prison, there were seven full-time general practitioners, 11 nurses and 15 assistant nurses; and at Nanclores de la Oca Prison, there were eight full-time general practitioners, nine nurses and eight assistant nurses. Madrid IV Prison also had a full-time dentist.

In addition, prisoners could access a range of specialised services either within the prison or at a local hospital. Medical facilities in these establishments were suitably equipped.

70. However, as regards access to psychiatric care, the delegation noted that it was limited in all the prisons visited. In Madrid IV Prison, an external psychiatrist visited the establishment twice a month while at Puerto III Prison, a psychiatrist only visited once a month; for a prison population of more than 1,650 inmates, a number of whom displayed clear signs of a mental disorder, such a minimal presence is totally inadequate. For example, an inmate who, according to his medical file, displayed clear psychiatric disturbances had never been seen by a psychiatrist since his admission to Puerto III Prison in July 2010. In the intervening period, the inmate in question had not only been held in the closed regime department but had spent seven months in solitary confinement. Yet, no interview had been held with the psychiatrist despite the clear danger that prolonged solitary confinement could lead to a further deterioration in his mental health.

**The CPT recommends that the Spanish authorities take the necessary steps to increase the presence of a psychiatrist in the prisons visited, in particular at Puerto III Prison.**

71. The medical examination carried out upon admission was in general performed within 24 hours in all establishments visited and included a series of neurological and biochemical tests with a particular accent on syphilis, HIV and hepatitis B and C. Further, the delegation noted that upon admission injuries were normally recorded in a specific form, which was subsequently forwarded to the director and supervisory judge, and a copy placed in the personal file of the inmate. The CPT has also taken note of new instructions issued by the Director of the Prison Administration on 31 May 2011, which introduce in every prison a register of injuries as recorded by the doctor upon admission and during detention within the establishment. This measure is welcomed and **the Committee trusts it will be effectively implemented.**

72. In the course of its visit to the Puerto III Prison, the delegation was informed that between January 2010 and June 2011 there had been 11 deaths<sup>33</sup> among the establishment's inmate population. In one instance, on 25 February 2010, an inmate had died after apparently being crushed by the door of his cell which closed automatically as he was trying to exit. An investigation into the death had been opened by the Cadiz State Prosecutor and an autopsy had been carried out<sup>34</sup>. Further, an internal enquiry by the Ministry of the Interior had concluded that there had been a technical fault with the automatic door and modifications had subsequently been made to each door.

**The CPT would like to be informed of the results of the investigation of the Cadiz State Prosecutor as well as the conclusions of the autopsy report.**

## 7. Other issues

### a. discipline

73. Notwithstanding the informal practices noted in Puerto III Prison, an examination of the disciplinary procedures in the prisons visited by the CPT's delegation revealed that prisoners were able to benefit, in practice, from the formal safeguards surrounding the disciplinary procedure (notably, the requirement that proceedings be served on prisoners in writing; the possibility to be assisted by a third party, including a lawyer; the possibility to present evidence and the requirement that a decision declaring evidence inadmissible be motivated; the possibility to appeal).

The delegation noted that recourse to the sanction of solitary confinement varied from prison to prison; for example, 87 inmates had received a disciplinary sanction of 7 to 10 days of solitary confinement at Madrid IV Prison during the first five months of 2011, for a population of 1,319 inmates. At Puerto III Prison, the numbers were much higher with 535 sanctions of solitary confinement, of which 188 were for periods of more than 10 days, between October 2010 and June 2011, for a population of some 1,600 inmates.

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<sup>33</sup> According to the information received, two were deaths due to natural causes, two were suicides, three were suspected drug overdoses, three occurred during home leave and one was classified as an accidental death.

<sup>34</sup> In Spain, it is the relevant Supervisory Judge, based on advice from a forensic doctor, who decides whether an autopsy should be carried out on a person who dies in prison.



74. According to the General Organic Law on Prisons (Article 76.2) and the Prison Regulations (Article 236), the maximum sanction for a very serious offence cannot exceed 14 days of solitary confinement, or 42 days when it concerns several serious offences that have taken place at the same time. In the latter instance, the approval of the supervisory judge is required whenever a prison proposes solitary confinement for a period greater than 14 days. The judge should also state whether the sanctions should be applied consecutively or at reasonable intervals.

At Puerto III Prison, the CPT's delegation noted that in each case where the prison director had requested solitary confinement for a period in excess of 14 days, the supervisory judge had approved the placement with identical legal arguments and reasoning.

For example, at this prison, the delegation met an inmate who had served 19 disciplinary sanctions between October 2010 and June 2011 which amounted to 214 days of solitary confinement out of a total number of 287 days for which he had been present in the establishment. In many instances he spent longer than 14 days consecutively in solitary confinement. Further, in the periods when he was not in solitary confinement as a disciplinary punishment he was kept in the special department (under Article 91.3) and remained de facto in solitary confinement, except that he was offered three hours of outdoor exercise with another prisoner. There was no record of the supervisory judge ever questioning the prolonged periods of solitary confinement proposed by the prison.

75. Solitary confinement can have an extremely damaging effect on the mental, somatic and social health of those concerned.<sup>35</sup> Therefore, it should only be imposed as a disciplinary sanction in exceptional cases and as a last resort, and for the shortest possible period of time. In the CPT's view, a continuous period of 42 days of solitary confinement as a punishment is totally excessive.

**The Committee recommends that immediate steps be taken to ensure no prisoner is held continuously in solitary confinement as a punishment for longer than 14 days. If the prisoner has been sanctioned to solitary confinement for a total of more than 14 days in relation to two or more offences, there should be an interruption of several days in the solitary confinement at the 14-day stage.**

**The CPT also considers that it would be preferable to lower the maximum possible period of solitary confinement as a punishment for a given disciplinary offence.**

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<sup>35</sup> See for example, Shalev, S., *A Sourcebook on Solitary Confinement*, Mannheim Centre for Criminology, London 2008 (available electronically at [www.solitaryconfinement.org](http://www.solitaryconfinement.org)).

b. contact with the outside world

76. The CPT's delegation found that the favourable situation of promoting contact with the outside world, observed during previous visits, persisted. Prisoners were entitled to two 20-minute visits per week, with a maximum of four visitors; prison management may authorise that these two weekly visits, which take place in closed visiting booths, be accumulated. In addition, prisoners may receive two monthly open visits, lasting between one and three hours each, one of them being an intimate (so-called *vis-à-vis*) visit, the other from close relations. Further association visits, lasting a maximum of six hours, from the spouse or partner and children of up to ten years of age may also be authorised.

In addition, prisoners are entitled to receive and send letters and to make telephone calls. According to the information received by the delegation in the establishments visited, inmates were allowed to make five telephone calls every week, each call lasting some eight minutes.

**The CPT recommends that the Spanish authorities allow all visits to take place as a rule in open conditions, visits in closed booths to be restricted to those cases when it is justified for security-related reasons.**

c. supervision

77. As regards the role of supervisory judges in monitoring the implementation of custodial sentences and safeguarding prisoners' rights, as regulated by Article 76 of the General Organic Law on Prisons, the CPT's delegation noted once again that judges were still not visiting prisoners in the accommodation units or even the special departments or segregation units of the visited prisons. **The CPT recommends that the Spanish authorities to ensure that supervisory judges are encouraged to visit the whole of the prison's premises when carrying out their duties and to enter into contact with both prisoners and prison staff.**

## C. Foreign nationals held under aliens legislation

### 1. Preliminary remarks

78. The administrative detention of foreign nationals is regulated by the Organic Law 4/2000 on the rights and obligations of aliens in Spain and their social integration. The law has been amended on several occasions, most recently in 2009 (Law 2/2009).

Persons can be detained under this law for the purposes of expulsion from the territory for violations listed under Articles 53 and 54 of the Organic Law 4/2000 (present on the territory without proper documentation and authorisation, posing a threat to public order or taking part in illegal immigration). A judge may order detention in cases where the authorities are unable to carry out a deportation order within 72 hours of its having been issued. Further, detention may be authorised when a migrant does not leave the country within the prescribed time limit after being issued a deportation order. The maximum period of detention was increased from 40 to 60 days in 2009 (Article 62.2).

Article 60 of the Law specifically states that the Centres for the Internment of Foreign nationals (*Centros de Internamiento de Extranjeros* (CIEs)) should not function like prisons. Further, the detention of juveniles in these centres is prohibited. The amendments in 2009 also provided for the adoption, within a delay of six months, of Rules on the internal functioning of CIEs. However, at the time of the visit in June 2011 these Rules had not yet been adopted. **The CPT trusts that the remarks made in this report will be taken into account when finalising the Rules. It would like to receive a copy of the Rules once they are adopted.**

79. At present, there are nine dedicated CIEs in operation with a total capacity of 2,692 places (2,271 for men and 421 for women). At the time of the visit, the six centres on the mainland of Spain were accommodating 676 persons and the three centres in the Canary Islands 46 persons. The CPT's delegation carried out visits to the CIEs of Aluche in Madrid and Zona Franca in Barcelona. The CIEs are under the authority of the Ministry of the Interior, managed by the National Police and staffed by police officers.

The *Aluche Centre*, located on the outskirts of Madrid, is a former prison and has the capacity to hold 236 men and 44 women; at the time of the visit, the facility was accommodating 196 men and 35 women.

The *Zona Franca Centre*, situated in the industrial port area of the city of Barcelona, forms part of the main National Police complex in the area and was opened in 2006. It has the capacity to hold 148 men and 78 women and, at the time of the visit, the occupancy levels were 88 and four, respectively.

According to the information provided to the CPT's delegation, the vast majority of the persons held in both centres had either been transferred from prison, after having completed their sentences, with a view to deportation or had had their prison sentence commuted into a deportation order, if the sentence was between one and six years in length<sup>36</sup>.

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<sup>36</sup> See Article 89 of the Criminal Code (Ley Orgánica 10/1995).

80. At the outset, it should be noted that in spite of Article 60 of the Organic Law, the layout and design of both centres displayed very much a carceral environment, with barred windows, gated corridors and cells. The prison-like atmosphere was accentuated by the restrictive regime in place and the limited contacts permitted with the outside world.

**The CPT recommends that the Spanish authorities review the material conditions and regime in the Aluche and Zona Franca Centres, and if necessary in other CIEs, so as to ensure they provide a less restrictive environment (see also paragraphs 86 to 89).**

## **2. Ill-treatment**

81. At both Centres the delegation received a number of allegations of ill-treatment by staff.

At the *Zona Franca Centre*, many complaints were made about one shift of male police officers, who apparently made frequent racist remarks and ill-treated detainees. The allegations primarily consisted of slaps and blows with truncheons to the arms and upper-body, which were said to be inflicted in the small room designated as a library for male detainees, where there was no CCTV. The CPT's delegation also received similar allegations of ill-treatment concerning persons who had previously been held in the Centre. In one instance, injuries consistent with the allegations of ill-treatment were observed by the delegation's doctor.

Allegations of excessive use of force by an external intervention squad, which carried out cell searches, were also made by some detainees.

At the *Aluche Centre*, the delegation received multiple allegations of ill-treatment of detained persons by members of an external squad which intervened late at night on 22 May 2011 to deal with a disturbance. In addition to detailed allegations from persons located on different wings and floors of the Centre, the injuries<sup>37</sup>, as observed by the delegation's doctor, were consistent with the allegations. According to information gathered by the delegation, the intervention force rapidly brought the situation under control yet allegedly continued to deliver blows to detainees who, in certain cells, had been told either to kneel with their hands interlocked behind their heads or to lie face down on the floor. Allegations were also received of one officer entering a cell and randomly hitting any detainee within reach, including an elderly man lying on his bed.

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<sup>37</sup> For example, a broken finger; bruising to arms, shoulder and legs; swelling of right hand.

82. At the end of the visit, the CPT's delegation requested that an effective – and in particular prompt - investigation<sup>38</sup> be carried out into the events of 22 May 2011 at the Aluche Centre. The reason for insisting on a prompt investigation lay with the fact that detainees who had been present at the time of the disturbance (some of whom had been injured) were in the process of being deported; clearly, it was important to interview these persons before they were deported. However, apparently no such investigation has been carried out. The Spanish authorities simply forwarded to the Committee the reports drawn up by the Director of the Centre and the head of the intervention force, written immediately after the events on 24 May 2011 (a copy of which the CPT's delegation already possessed).

Not only had the Committee's delegation requested an investigation based upon the information it had gathered during interviews at the Aluche Centre but at least one detainee had made an official complaint about the incident and the injuries he had sustained. The absence of any investigation represents a lack of co-operation with the CPT as well as a potential violation of the procedural guarantees flowing from Article 3 of the European Convention on Human Rights. **The CPT wishes to know why an effective investigation was not carried out into the events of 22 May 2011 at the Aluche Centre.**

**The Committee also reiterates its recommendation that the Spanish authorities ensure that an effective investigation is initiated promptly whenever there are grounds to believe that ill-treatment by the police may have occurred.**

Further, in the light of the information gathered during the 2011 visit, **the CPT recommends that all police officers assigned to duties at the Aluche and Zona Franca Centres, as well as other law enforcement officials who may be called upon to intervene in these centres, be reminded that any form of ill-treatment of detainees – whether physical or verbal – is unacceptable and will be the subject of severe penalties.**

83. With a view to combating ill-treatment, the CPT has consistently stressed the importance of any detained person with injuries being seen promptly by a doctor who should, in addition to providing treatment for the person, carry out a full examination of the person and describe the injuries in full, indicating whether they are consistent with any allegations made of abuse of authority by law enforcement officials. Further, whenever injuries are recorded which are consistent with ill-treatment, a record of the findings should be transmitted to the relevant authorities. None of this was happening in either of the Centres visited by the CPT's delegation.

**The CPT recommends that the Spanish authorities take the necessary steps to ensure that the practice in all CIEs is brought into line with the above requirements.**

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<sup>38</sup> In order for any investigation into allegations of ill-treatment to be effective, it should be independent, prompt, thorough and comprehensive. There should also be a sufficient element of public scrutiny (see the 14<sup>th</sup> General Report of the CPT – CPT/Inf (2004) 28, paragraphs 31 to 36).

84. The CPT also disapproves of the practice followed in both of the establishments visited of calling detainees by their detention number. This practice was felt by many detainees interviewed to be humiliating and degrading, and it is certainly not conducive to the establishment of positive staff/detainee relations. **The CPT recommends that the Spanish authorities put an end to this practice; staff in CIEs should address detainees by their names.**

85. Finally, the CPT's delegation received several allegations of ill-treatment by police officers at the airport when trying to effect a deportation. In a few cases, the persons in question had required hospitalisation and their medical files recorded injuries which were consistent with the allegations made. Further, following the visit, the CPT was informed about the case of a Bolivian national who had allegedly been ill-treated by police officers during his deportation on 22 June 2011 to Santa Cruz. In addition to the photographs taken upon his arrival in Bolivia, a forensic examination was carried out which apparently describes bruises on the right cheek, the neck, shoulders and chest, as well as on the right side of the back, on both forearms and both upper arms, around the left eye and on the knees and ankles. The case is currently being examined by the Investigative Judge of the 6<sup>th</sup> Madrid Court. **The CPT would like to be informed of the outcome of this case.**

In addition to ensuring that escort staff are properly trained and deportation operations are carefully documented, the CPT considers that foreign nationals who have been the subject of an abortive deportation operation undergo a medical examination as soon as they are returned to detention. In this way it will be possible to verify the state of health of the person concerned and, if necessary, establish a certificate attesting any injuries. Such a measure could also protect escort staff against unfounded allegations. **The CPT recommends that the Spanish authorities take the necessary steps to put in place such procedures.**

### **3. Conditions of detention**

#### **a. material conditions**

86. The *Aluche Centre* consisted of three floors. Female detainees were accommodated on the ground floor in multi-occupancy cells along one corridor; the ground floor area also contained a day room and adjoining outdoor yard for women and a separate large outdoor exercise yard, a common room and a refectory for men. The first and second floors each contained two corridors with multi-occupancy cells for male detainees.

The cells on each floor measured some 20 to 25m<sup>2</sup> and were of a similar layout, containing three or four sets of bunk beds and a large wash basin. Lighting within the cells, both artificial and natural, was sufficient and the overall state of repair was adequate. However, there were no tables or chairs within the cells. Further, two cells contained no wash basin as apparently these had been damaged in the course of the disturbance of 22 May. At the time of the visit some three weeks later these two cells each continued to accommodate detainees (most of whom had been there since 22 May) despite the fact other undamaged cells were available.

**The CPT recommends that the permitted occupancy rates in the cells be reduced so as to guarantee a minimum of 4m<sup>2</sup> living space per detainee. Further, every cell should be equipped with a table and some chairs, as well as a wash basin.**

87. The *Zona Franca Centre* consisted of two floors, with male detainees held along two corridors on the first floor. Female detainees were accommodated along one corridor on the ground floor, with access to an adjoining day room and an outdoor yard. Separated from the women's section, male detainees had access to two large outdoor exercise yards (only one of which was in use at the time of the visit), a large day room with a television and tables and chairs, as well as a small library and a few drinks machines. The men ate communally in a large dining room.

The facilities were generally in a decent state of repair. The multi-occupancy cells on the first floor contained either two or three sets of bunk beds, and a large wash basin; they were of an adequate size (16 or 24m<sup>2</sup>) for the intended occupancy rate, and enjoyed sufficient lighting (both natural and artificial) and ventilation. Showers were offered every day. Nevertheless, **the CPT invites the Spanish authorities to equip the cells with a table and some chairs.**

88. Detained persons in both Centres complained about the quality of the food and its lack of diversity. Further, complaints were received about the lack of hygiene products made available to detainees and that the water in the showers was usually cold. Some complaints, from both male and female detainees, were also made about staff not opening the cell doors at night when they wanted to go to the toilet. In the light of the above, **the CPT recommends that the Spanish authorities:**

- **review the provision of food in both Centres to ensure in particular that it is adapted to the cultural specificities of the detainee population;**
- **ensure that detainees have sufficient products to maintain their personal hygiene as well as that of the cells in which they are held;**
- **ensure that detainees have ready access to a proper toilet facility at all times, including at night.**

b. regime

89. At the *Aluche Centre*, male detainees were permitted four hours of access to the outdoor exercise yard and day room, either in the morning or the afternoon depending on which floor they were located. For the rest of the day, they would either be confined to their cells (during the siesta after lunch) or to their corridor. A similar regime existed for female detainees, except that due to their lower numbers they could spend four hours in the morning and in the afternoon in the day room and outdoor courtyard. Between midnight and 7.30 a.m. all detained persons were locked in their rooms with the lights turned off.

No organised activities were provided. The men sat around in their cells smoking or playing cards; access to television, radio or personal music players was not permitted in the cells. In the outdoor yard, detainees could play football or table tennis, and in the day room they could watch television. The women also spent most of their time in idleness; the only organised activity offered was colouring-in pictures of various objects, such as butterflies, with crayons. Those women with whom the delegation spoke stated that they felt insulted by this activity. A similarly sparse regime was in place at the *Zona Franca Centre*, except that detainees had access to the outdoor yard and day room during both the morning and afternoon.

**The CPT recommends that the Spanish authorities introduce a range of purposeful activities for persons held in centres for foreign nationals. The longer the period for which persons are detained, the more developed should be the activities which are offered to them.**

#### 4. Health care

90. Health care in all the CIEs has been contracted out to a private company. At the *Aluche Centre*, a doctor attended every morning of the week and one nurse was present on a permanent basis, day and night. At the *Zona Franca Centre*, a doctor was present during the mornings and there was one nurse present throughout the day. Neither Centre was visited by a dentist or gynaecologist or any other medical specialist.

The nursing presence during the day at the Aluche Centre was not adequate in view of the number of detainees (more than 230). As regards Zona Franca, the health-care resources were sufficient in view of the number of detainees at the time of the visit (less than 100). However, those resources would have to be reinforced if the Centre operated at full capacity.

**The CPT recommends that the presence of nursing staff during the day be increased at the Aluche Centre, and the level of health-care resources at the Zona France Centre be kept under review in the light of the size of the detainee population. Further, steps should be taken at both Centres to ensure that detainees are provided with access to a dentist and a gynaecologist, as required.**

91. The independence of medical staff must be upheld at all times; it is the responsibility of the management of the CIEs to ensure that police officers do not in any way attempt to influence health-care staff in the carrying out of their duties. In this respect, all medical consultations between detainees and health-care staff should be confidential; this was not the case at the time of the visit. **The CPT recommends that all medical examinations be conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of non-medical staff.**

Further, at the Zona Franca Centre, allegations were received of pressure being placed upon medical staff by police officers not to provide proper treatment to detained persons, and apparently two nurses had resigned due to this state of affairs. **The CPT would like to receive the comments of the Spanish authorities on this matter.**

92. There was no trained professional to provide psychiatric/psychological care in either Centre. For many of the detainees, not knowing what the future holds represents a stressful condition and these individuals may require treatment. There did not appear to be any policy to identify persons with suicidal tendencies and place them on “suicide watch”, and there were in any case no qualified persons to make such evaluations. Incidents of self-harm in the two CIEs visited were frequent and in May 2010 a young man had committed suicide in the Zona Franca Centre. **The CPT recommends that measures be taken to provide psychological and psychiatric assistance for the detainee population in CIEs.**



## 5. Other issues

93. As already indicated, the staff in both CIEs was made up essentially of officers from the National Police, who openly carried long truncheons and put on black gloves whenever they interacted with detainees. Their function was purely security-oriented and they had received no specific training for their duties in the Centres.

The CPT has constantly stressed the importance of ensuring that staff working in detention centres for foreign nationals are carefully selected and receive appropriate training. As well as possessing qualities in the area of interpersonal communication, the staff concerned should be familiarised with the different cultures of the detainees and at least some of them should have relevant language skills. Ideally, they should be taught to recognise possible symptoms of stress reactions displayed by detained persons and to take appropriate action.

Further, in the interests of promoting positive relations between staff and detainees, the CPT considers that staff should not carry truncheons openly within the detention centre.

**The CPT recommends that the Spanish authorities take the necessary steps to ensure that the above requirements are met.**

94. Maintaining contact with the outside world is extremely important for immigration detainees; every effort should be made by the authorities to promote such contact. In this respect, the rule should be that foreign nationals are allowed to have visits under open conditions, closed visits behind a screen being limited to exceptional and well reasoned cases .

Regrettably, in both CIEs the emphasis was on closed visits. At the *Aluche Centre*, the visiting room consisted of some 10 partially enclosed cubicles with detainees separated from their visitors by a glass partition. At the beginning of the visit, the glass partition in each cubicle was opened to enable the detainee and visitors (including any children) to embrace quickly; after a minute, the partition was closed and the visit continued under closed conditions, with communication via a telephone. For those foreign nationals with children, which was a considerable number, such limited physical contact is not only very difficult for them but is likely to affect their children more profoundly; in this context, the CPT recalls that the best interests of the child should be taken into consideration. Similar arrangements existed at the *Zona Franca Centre*. Further, only one visit of 30 minutes was permitted per week.

**The CPT recommends that the Spanish authorities review their approach towards the arrangements for visits in CIEs; in particular, the visiting rooms should be remodelled to enable detainees to meet openly with family and friends visiting them, and the environment should be child-friendly (including a play area for children). Moreover, the amount of visiting time should be increased to at least one hour every week.**

95. Article 62 quinquies of the Organic Law 4/2000 permits the Director of the Centre to authorise the use of physical force and to separate a violent detainee from the rest of the population. The relevant investigative judge should be informed whenever such a measure is applied.

The conditions in the provisional isolation cells do not call for any particular comment. However, no use of force reports were drawn up in either centre following an incident nor was any evaluation of force used carried out by the management. As regards the separation of violent detainees and their placement in provisional isolation cells, there was no central register for recording each incident. For those cases examined by the delegation, it was not possible to obtain information on the incident that led to the person being separated. Further, the communications with the various investigative judges on this matter appeared incomplete. For example, the judge from Court No. 6 was informed on 13 April 2011 that the person in question no longer needed to be kept in isolation but there was no information on when the measure had commenced.

It is imperative both for reasons of transparency and accountability, as well as to counter false accusations, that a system of proper recording be put in place for all incidents involving the use of force and whenever recourse is had to provisional isolation.

**The CPT recommends that the necessary steps be taken to put in place a proper system of recording, in the light of the above remarks.**

96. As to the use of means of restraint, the delegation received several allegations of detainees having been restrained with straps to a bed in one of the cells used for provisional isolation on the ground floor of the Zona Franca Centre. Regrettably, there was no documentation available as to the reasons for the use of means of restraint, the manner in which it was carried out, its duration, the monitoring in place or any follow-up measures taken.

The CPT has commented extensively on the use of means of restraint in prison, notably fixation (see in particular Section E.3 below). **The same safeguards should be applied in CIEs.**

97. The internal complaints system in CIEs should ensure that a proper record is maintained of every complaint and that detainees receive, within a reasonable time, a reasoned answer to their complaint. This was not the case in either of the centres visited; many detainees complained that they received no feedback to their written complaints or requests.

**The CPT recommends that the authorities improve the internal complaints system in all CIEs, taking into account the above remarks.**

98. As to inspections, the amendment to the Organic Law adopted in 2009 authorises judges to carry out inspections of CIEs and opens up the possibility for non-governmental organisations to visit these centres. At the time of the visit, two years after the adoption of the law, a bye-law was still under preparation to regulate these issues. **The CPT would like to receive a copy of the bye-law, once it is adopted.**

## **D. Law enforcement agencies in Catalonia**

### **1. Preliminary remarks**

99. The Catalan Autonomous Police (Mossos d'Esquadra), which operates under the authority of the *Generalitat de Catalunya*, has been responsible for all policing matters in Catalonia since 2008, apart from border controls, immigration and counter-terrorism. The *Mossos d'Esquadra* has some 16,500 officers and operates 90 police stations throughout Catalonia.

The fundamental legal framework governing deprivation of liberty by law enforcement agencies in Catalonia remains the same as that in the rest of Spain.<sup>39</sup>

100. In 2011, the CPT's delegation carried out follow-up visits to the Mossos d'Esquadra Stations of "Les Corts" in Barcelona, Granollers and Hospitalet as well as visiting for the first time Badalona District Police Station and the Justice City holding cells for children.

### **2. Ill-treatment and effective investigations**

101. Many persons met by the CPT's delegation stated that they had been treated correctly when detained by Mossos d'Esquadra officers. However, it is regrettable that after several visits to Catalonia, the delegation again received a number of allegations of ill-treatment. The ill-treatment alleged consisted mainly of kicks and punches to the head and body and blows with truncheons to the body, usually at the moment of apprehension after the persons concerned had been brought under control. Several allegations were also received of persons being ill-treated while detained in police stations.

In a few cases, the delegation gathered medical and other evidence consistent with allegations of ill-treatment. For example, one person stated that he was apprehended on the street at 6 a.m. by two officers who apparently pushed him to the ground, handcuffed him and subsequently punched and kicked him in the head and upper body. He was taken to a health centre where he saw a doctor and was prescribed a pain killer but no note of his injuries was taken. When he was examined the following day by one of the doctors in the CPT's delegation, he had bruises below each eye as well as behind the right ear and on the left side of the chin. He also had bruising on both wrists and a laceration (2.5 cm x 3 cm) on the underside of the left wrist, and reduced movement of the thumb, forefinger and middle finger of the right hand. The findings were consistent with the allegations of ill-treatment.

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<sup>39</sup> See Spanish Constitution, Articles 17 (2) and 55 (2), and Code of Criminal Procedure, Articles 520 and 520 bis; and paragraph 10 above.

102. The information gathered in the course of the 2011 visit highlights the necessity for continued vigilance as regards the manner in which persons detained by the Mossos d'Esquadra are treated. **The CPT recommends the Catalan authorities ensure that a message of zero tolerance of ill-treatment of detained persons reaches all law enforcement officials at all levels.**

It should be added that, such a message is undermined every time that there is no effective investigation into an allegation of ill-treatment.

103. In the course of the visit, the CPT's delegation held an exchange of views with the Office of Internal Affairs of the Mossos d'Esquadra on its *modus operandi* and investigations into allegations of ill-treatment. In 2010<sup>40</sup>, the Office opened two files on alleged ill-treatment by officers, both of which were subsequently suspended pending the result of a criminal investigation. In one of the files, the delegation noted that when the Internal Affairs Office had conducted its investigation, neither the person who had allegedly been ill-treated nor the organisation which had filed the complaint on his behalf had been interviewed; only members of the police had been requested to provide statements. **Such an approach does not meet the criteria for an effective investigation<sup>41</sup>.**

The delegation was told that no disciplinary investigation could be undertaken with regard to a police officer until such time as the criminal proceedings had terminated. This meant, for example, that the Internal Affairs Office had not opened any disciplinary files concerning the events of March 2009 in relation to the allegations of excessive use of force by police officers during a demonstration at Barcelona university nor into the case of six officers recorded on CCTV as apparently ill-treating a detained person in "Les Corts" District Police Station in 2007, as the criminal cases were ongoing.

104. When officials who order, authorise, condone or perpetrate ill-treatment are brought to justice for their acts or omissions, an unequivocal message is delivered that such conduct will not be tolerated. Apart from its considerable deterrent value, this message will reassure the general public that no one is above the law, not even those responsible for upholding it. The knowledge that those responsible for ill-treatment have been brought to justice will also have a beneficial effect for the victims.

However, the CPT is concerned that a perceived lack of action by the authorities in cases where there is *prima facie* evidence that police officers have engaged in ill-treatment will encourage a climate of impunity. **At a minimum, officers under criminal investigation for an act of alleged ill-treatment should, while the case is ongoing, be assigned to duties which do not involve direct contact with the public or detained persons.**

**Further, the CPT would like to receive information on the outcome of the criminal cases referred to in paragraph 103 above.**

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<sup>40</sup> In 2011, as of 8 June, no files had been opened.

<sup>41</sup> As referred to by the CPT in its 14<sup>th</sup> General Report; see CPT/Inf (2004) 28, paragraphs 31 to 36.

105. A Code of Ethics for the Mossos d'Esquadra entered into force in November 2010 but was subsequently suspended a few weeks later, in order for further consultations on its contents to take place. **The CPT would like to be informed of the current content and status of the Code.**

106. In the course of the 2011 visit, the CPT's delegation received information, including photographic material, which lent credence to allegations of excessive use of force by the police during the operation of 27 May 2011 in Plaza de la Cataluña. For this reason, the delegation looked into this police action, aimed at clearing the Plaza de la Cataluña of a group of demonstrators (*les indignes*) camping out in the square, and during which a number of persons were deprived of their liberty.

The CPT's delegation raised several concerns with the *Conseller* of the Interior and senior officials from his Department about the operation of 27 May. In particular, officers involved in the operation did not have any visible identification on their uniforms<sup>42</sup>. Further, it stressed the importance of carrying out an internal inquiry into the events of 27 May and to follow up on any allegations of ill-treatment. The *Conseller* told the delegation that an internal inquiry was in the process of being launched.

The Ombudsman of Catalonia has recently published a detailed report<sup>43</sup> on this event in which he criticises the police for their lack of planning and coordination, a disproportionate use of force by officers and the continued absence of means of identification of police officers. He also recommended that a number of disciplinary files be opened to investigate the complaints made against the police, including by a number of persons who were allegedly beaten, while on the ground, after having been brought under control by police officers.

**The CPT recommends that steps be taken to ensure that every Mossos d'Esquadra officer wears at all times some form of visible identity while on duty. Further, it would like to be informed about the outcome of the internal inquiry carried out by the Department of the Interior and whether steps have been taken to implement the recommendations made by the Ombudsman.**

107. The delegation was informed about the means of force deployed by the Mossos d'Esquadra, notably as regards a new projection weapon<sup>44</sup> which fires a hard sponge ball, capable of immobilising a person up to a range of 30 metres. This new weapon records the number of times it is used and the name of the police officer who fired it. However, it was not clear whether either this weapon or weapons firing plastic bullets were covered by Circular 5/2008 of 11 March 2008, which regulates the use of firearms.

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<sup>42</sup> A court case into the events of 18 March 2009, during which police officers were accused of using excessive and disproportionate force to break up a student demonstration at Barcelona University, illustrates the importance of this issue. There were no criminal convictions, primarily because the officers concerned could not be identified. Order 217/2008 of 4 November 2008 requires all police officers to have some sort of visible identification on their uniforms.

<sup>43</sup> See Catalan Ombudsman's Report: *Maladministration of May 27 and June 15 incidents brings about infringement of rights*, published on 11 July 2011.

<sup>44</sup> Model LL-06 less lethal launcher, made in Switzerland by Brugger and Thonet.

The CPT considers that the criteria for the use of projectile-firing weapons by police officers should at least closely correspond to those governing the use of firearms; their use must be thoroughly regulated and monitored. Furthermore, only specially selected and trained police officers should be allowed to use such weapons and all necessary precautions should be taken when such weapons are used. It is also essential that all persons against whom these weapons are deployed be subsequently examined by a medical doctor. In addition, there should always be a thorough de-briefing and evaluation of every incident following their use.

**The CPT would appreciate the comments of the Catalan authorities on the above remarks concerning the use of projectile-firing weapons. Further, it would like to know whether a post-incident evaluation is carried out each time these weapons are deployed and used.**

### **3. Safeguards against ill-treatment**

108. In the course of this visit, the CPT's delegation reviewed the safeguards afforded persons deprived of their liberty by the Mossos d'Esquadra; namely, the rights of such persons to inform a close relative or another third party of their choice of their situation, to have access to a lawyer, and to have access to a doctor. It also examined whether such persons were informed without delay of all their rights.

109. As regards notification of custody, most detained persons with whom the delegation spoke stated that they had been asked by the police whether they wanted someone to be informed of their situation shortly after they were brought to the police station. However, several persons stated that they did not know whether someone had indeed been informed, as they had received no feedback from the officers on duty.

**The CPT recommends that the necessary steps be taken to ensure that all persons who exercise the right of notification of custody are subsequently informed whether a communication with a close relative or another third party of their choice has occurred.**

110. As the CPT has stated in the past, its objective of guaranteeing an effective right of access to a lawyer during police custody, is not linked to issues of due process or the right to a defence; it is aimed at preventing ill-treatment. In the CPT's experience, it is during the period immediately following the deprivation of liberty - and, *a fortiori*, during which the individual is subjected to police questioning - that the risk of intimidation and ill-treatment is at its greatest.

It follows that to be effective as a safeguard against ill-treatment, access to a lawyer must be guaranteed as from the very outset of deprivation of liberty; further, the lawyer and the detained person must be able to meet in private. In all but one<sup>45</sup> of the police stations visited, the practice was for the duty officer to call the Bar Association which was responsible for organising for an ex officio lawyer to visit the station. However, the time that elapsed between the moment a person requested access to a lawyer until the moment he or she met with a lawyer varied enormously from some four hours to more than 24 hours. Further, a number of persons alleged that they were not able to meet in private with a lawyer until after making a formal statement to the police.

**The CPT recommends that the Catalan authorities take the necessary steps to ensure that requests by detained persons to have access to a lawyer are met promptly in all cases and that the persons concerned enjoy the right to meet in private with the lawyer.**

The CPT's delegation also came across a case in which a detained person was not able to have access to a lawyer named by him, as the police officers considered that their only duty was to inform the Bar Association rather than to contact a specific lawyer directly. **The CPT wishes to receive confirmation that persons deprived of their liberty by the police have, in practice, the right of access to a lawyer of their own choice; if a detained person requests access to a specific lawyer, the Bar Association should be contacted only if that lawyer cannot be reached.**

111. On the whole, access to a doctor<sup>46</sup> for persons in the custody of Mossos d'Esquadra was guaranteed in a satisfactory manner. At "Les Corts" District Police Station a doctor employed by the Ministry of Health was on duty weekdays between 8.30 a.m. and 9 p.m. and on Saturdays from 8.30 a.m. to 5.30 p.m., and outside of these times a doctor was on call or the detained person was taken to a health-care centre. In other stations, in case of need, either a doctor would be called to the station or the detained person would be taken to an emergency medical centre. However, the delegation met a number of detained persons who stated that they had not seen a doctor despite making a specific request. The problem of access appeared to be particularly acute on Sundays when there was no medical staff on duty at "Les Corts", and in other stations transport posed logistical challenges on that day.

**The CPT recommends that steps be taken to improve access to a doctor for persons in police custody, in the light of the above remarks.**

112. Further, the delegation noted that medical examinations, whether in the police stations or a medical centre, still took place in the presence of police officers.

The CPT acknowledges that special security measures may be required in a particular case, when a security threat is perceived by medical staff. However, as was made clear in the report on the 2007 visit, there can be no justification for police officers being *systematically* present during medical examinations; their presence violates medical confidentiality and is usually unnecessary from a security standpoint. Alternative solutions can and should be found to reconcile legitimate security requirements with the principle of medical confidentiality. One possibility might be the installation of a call system, whereby a doctor would be in a position to rapidly alert police officers in those exceptional cases when a detained person becomes agitated or threatening during a medical examination.

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<sup>45</sup> At Granollers District Police Station, a list of ex officio lawyers existed for each day of the week.

<sup>46</sup> There is still no right for a detained person to be examined by his or her own doctor, if he or she so wishes. See paragraph 39 above.

**The CPT reiterates its recommendation that steps be taken to ensure that all medical examinations are conducted out of the hearing and - unless the doctor concerned expressly requests otherwise in a given case - out of the sight of police staff.**

113. It would appear that persons detained by the police were systematically shown an information sheet about their rights before being placed in a cell. However, as had been the case in 2007, detained persons were not actually provided with a copy of their rights and a number of persons explained that they did not understand what the rights were or how they should be exercised. The reasons advanced by police officers for not providing detainees with a copy of the information sheet (suicide risk, risk of blocking the toilet) were quite simply not convincing.

It is essential that detained persons are able to fully comprehend their rights and, in this regard, it is often necessary for persons to be able to read such a sheet after they have been processed and placed in a cell. This is all the more important for foreign nationals who may not understand the Spanish legal system or even the language. The CPT's delegation came across a number of foreign nationals from a range of countries who did not speak Spanish and who did not appear to have been informed of their rights in a language they understood (despite the existence of the information sheet in some 40 languages).

**The CPT reiterates its recommendation that steps be taken to ensure that detained persons are provided with a copy of the information sheet in a language they can understand.**

#### **4. Conditions of detention**

114. All Mossos d'Esquadra establishments visited were modern purpose-built facilities and were of a similar design and layout. Further, all cells and much of the corridors in the detention areas were covered by CCTV. However, all the establishments had a fundamental design flaw in that the detention areas were located in the basement of the buildings.

115. The detention area at the District Police Station of "Les Corts" was described in the report on the 2007 visit<sup>47</sup>, and many of the deficiencies identified in that report were still evident at the time of the 2011 visit.

The absence of any access to natural light due to the custody area being located in the basement is a serious design fault. Further, the artificial lighting in the cells was insufficient for reading purposes. The ventilation system was once again not operating effectively, and it appeared that the cell toilet flush system, operated by police officers from a central control panel outside the cells, malfunctioned on a regular basis. The delegation received complaints about the overwhelming smell in the detention area from almost everyone who had been detained in "Les Corts", and it was also certainly not conducive to an appropriate working environment for the police officers involved.

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<sup>47</sup> See CPT/Inf (2011) 11, paragraph 71.



The CPT's delegation also received complaints that staff did not provide detained persons with sufficient quantities of drinking water; access to drinking water should not be rationed. Further, there appeared to be no convincing argument as to why all detained persons were systematically refused access to reading material, especially given the length of time that could be spent in detention. Most persons detained in "Les Corts" appeared to remain in custody for periods longer than 24 hours.

The delegation received many complaints from detained persons that they were not permitted to wash themselves, especially their hands, after using the toilet or before eating. The delegation had been informed by the authorities that "Les Corts" possessed a sanitary facility with a shower and wash basin which was available for use by detained persons upon request; however, none of the persons met by the delegation knew of its existence and the senior duty officer stated that he was under no obligation to inform detained persons about the facility. Further, the CPT has consistently stated that all persons held in police custody for longer than 24 hours should have access to outdoor exercise; regrettably, no such facility was available at "Les Corts" or any other station.

As regards the lightweight blankets provided to each detained person at "Les Corts", the authorities informed the delegation that they were changed once a week. In this context, for the purposes of hygiene, the CPT considers that each detained person should be provided with a clean blanket.

The District Police Stations of Badalona and Hospitalet each contained nine cells. In general, most of the deficiencies observed at "Les Corts" were also evident in these stations. The District Police Station of Granollers, with its ten basement cells, displayed similar shortcomings. Regrettably, even the Juvenile Detention Centre at the Ciutat de la Justícia was located in the basement of the building; it consisted of nine cells, three of which were intended for agitated juveniles and were only equipped with a concrete bench. The other cells were equipped with a concrete bench, a small concrete table with a board game painted on it and a television. None of the cells had access to natural light nor were they equipped with a sink or toilet or a call bell, and there was no outdoor exercise facility. Every effort should be made to minimise the time that a juvenile is held in these bleak cells.

116. To sum up, the main deficiencies observed in the Mossos d'Esquadra establishments concerned a lack of access to natural light and inadequate artificial lighting, poor ventilation, inadequate access to drinking water and to means of maintaining personal hygiene and no exercise yards. These are the same deficiencies identified by the CPT in its report on the 2007. **The CPT reiterates its recommendation that the Catalan authorities take the necessary steps to remedy these deficiencies.**

Further, **the CPT recommends that the Catalan authorities establish standards for police detention facilities, taking due account of the Committee's criteria; in particular, detention areas in modern purpose-built police stations should enjoy access to natural light and proper ventilation, and be equipped with an exercise yard.**

## **E. Prison establishments in Catalonia**

### **1. Preliminary remarks**

#### a. prison overcrowding

117. The Catalan authorities have invested considerable resources in recent years to increase the capacity of the prison system. However, the CPT's delegation was informed that the economic crisis had had an impact on the budget for the prison system, and that plans to build additional prisons were now being reviewed. At the same time, the prison population has continued to rise and, at the time of the visit, stood at 10,857<sup>48</sup>, an increase of some 15% since the 2007 visit. In particular, the number of foreign nationals had risen to nearly 5,000 or 45% of the inmate population (with more than 35% of inmates coming from countries outside the European Union).

In the CPT's view, regardless of the economic context, the building of additional accommodation is unlikely, in itself, to provide a lasting solution to the challenge of prison overcrowding. Instead, the promotion of policies to limit and/or modulate the number of persons being sent to prison can be an important element in maintaining the prison population at a manageable level. To this end, the Spanish authorities, in their response to the report on the 2007 visit, outlined various measures that were being pursued with a view to stabilising and even reducing the inmate population<sup>49</sup>. In particular, emphasis was being placed upon the development of alternatives to imprisonment.

At the time of the 2011 visit, the Catalan authorities stated that they would continue to promote the philosophy of facilitating the reintegration of offenders into society. This meant pursuing their attempts to promote alternatives to prison. Further, they considered that a recent amendment to the Criminal Code, which permitted judges to transform a prison sentence of less than six years for a foreign national into a deportation order, would also have an impact on the numbers of persons sent to prison.

**The CPT encourages the Catalan authorities to pursue a multi-pronged approach towards eradicating prison overcrowding, and would like to receive updated information on the measures being taken.**

#### b. prisons visited

118. The CPT's delegation carried out follow-up visits to the penitentiary centres of Brians 1 and "Modelo", and visited for the first time Lledoners Prison and the young persons' establishment in Quatre Camins (Joves). The delegation paid particular attention to the disciplinary units and special regime departments (DERT<sup>50</sup>), holding prisoners who were considered to be "dangerous" or "unadapted" to prison life, and to the question of fixation in a prison setting.

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<sup>48</sup> At 30 September 2011, the official prison capacity in Catalonia stood at 9,656.

<sup>49</sup> See CPT/Inf (2011) 12, pages 79 to 83.

<sup>50</sup> *Departament Especial de Regimen Tancat*.

119. **Brians 1 Prison** was described in the report on the 2007 visit<sup>51</sup> and at the time of the 2011 visit was accommodating 1,212 men and 330 women (now located in two different departments) for an official capacity of 1,220 and 350, respectively. There was also a 67-bed psychiatric facility serving all prisons in Catalonia located within the establishment.

**Joves Prison**, located next to Quatre Camins Prison near the town of Granollers, opened in November 2008 and accommodates sentenced and remand prisoners between the ages of 18 and 23. The establishment consists of four accommodation modules and at the time of the visit, was holding 372 inmates for a capacity of 450.

**Lledoners Prison**, located near the town of Manresa in central Catalonia and opened in 2008, accommodates sentenced adult prisoners. The establishment consists of eight accommodation modules. However, due to lack of staff, Module No. 3 was only partly operational and Module No. 8 was closed. The prison has an optimal capacity of 750 (and a maximum capacity of 1,000) and was accommodating 735 inmates at the time of the visit. The prison accommodated a high number of foreign nationals (some 55% of the inmate population), most of whom apparently had few if any family links in Catalonia.

**Modelo Prison**, also known as Barcelona Men's Prison, remains the largest remand prison in Catalonia. It was described in the report on the 2007 visit<sup>52</sup> and, at the time of 2011 visit, remained seriously overcrowded, accommodating 1,850 inmates for an official capacity of 1,100.

## 2. Ill-treatment

120. In all four of the prisons visited, the delegation received some allegations of physical ill-treatment of inmates by certain members of the prison staff. The alleged ill-treatment consisted mostly of punches and kicks to the body, and in many instances concerned either the time when prisoners were being brought to the establishment's DERT or during their stay in these departments.

In particular, at Modelo Prison, several allegations were received of prison officers slapping, punching, kneeling and kicking prisoners in the special regime department (Gallery No. 6):

- one inmate alleged that two officers had entered his cell on Gallery No. 3 and that one of them had insulted him and pulled him off his bed (the top of a triple bunk-bed). He was brought to Gallery No. 6, and while being taken up the steps to the second level, he alleged that he was punched on the right side of the face, kned in the stomach and thrown to the floor. He says that he took a piece of his broken eye-glasses, which had been knocked off his head, and cut his right arm as a preventive measure to stop the beating. He claims that he showed the doctor the injuries that he had suffered but that the doctor did not examine him properly or take note of his allegations because the prison officers were present and making provocative remarks.

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<sup>51</sup> See CPT/Inf (2011) 11, paragraph 80.

<sup>52</sup> Ibid.

- another inmate in Gallery No. 6 alleged that, one week prior to the delegation's visit, after asking for tobacco, three prison officers had entered his cell, put on their black gloves, slapped him in the face, punched him and hit his head against the wall. He was seen by a doctor afterwards but as the consultation took place in the presence of the prison officers he did not make any allegations. At the time of the visit, the inmate displayed a swelling below the right eye which was yellow in colour.
- a third inmate alleged that a particular prison officer (against whom a number of allegations of ill-treatment were received) had slapped him in the face and kicked him in the groin after he had protested at the officer taking a photograph of his wife off the cell wall. He said that he was too afraid of reprisals to complain.

121. Following the 2011 visit, the CPT was informed of a case of alleged ill-treatment of an inmate in the DERT at Lledoners Prison. The prisoner alleged that following an altercation with a prison officer at 10 a.m. on 5 September 2011, several officers entered his cell and delivered punches, kicks and knee blows to his head and chest. He was subsequently handcuffed and taken to a provisional isolation cell where he was fixated to a bed until 6 p.m. when, due to persistent bleeding from his right ear and noticeable breathing difficulties, he was transferred to St. Joan de Villatorrada Hospital. The medical record from the hospital noted the following injuries: "bruising around the right ear; a laceration of the right ear; contusion of the right wrist; fracture of the 9<sup>th</sup> and 10<sup>th</sup> ribs", and states that the right ear should be examined by a specialist. An investigation into this incident has apparently been opened. **The CPT would like to be informed of the outcome of the investigation into this case of alleged ill-treatment.**

122. It is extremely important for the Department of Justice, the Prison Service and prison directors to deliver the clear message that ill-treatment of inmates is not acceptable and will be dealt with severely. In the light of the information gathered during the 2011 visit, the authorities must institute measures to ensure all prison officers and managers understand why ill-treatment is unacceptable and unprofessional, and that allegations of ill-treatment will be thoroughly investigated. If proven, misconduct of this kind merits severe legal sanctions.

**The CPT reiterates its recommendation that the Catalan authorities deliver a clear message to all custodial staff that all forms of ill-treatment, including verbal abuse, are not acceptable and will be the subject of severe sanctions. More specifically, prison officers must be made fully aware that no more force than is strictly necessary should be used to control violent and/or recalcitrant prisoners and that once prisoners have been brought under control, there can be no justification for them being struck. In this context, the authorities should ensure that all prison officers are provided with training in recognised control and restraint techniques.**

123. The information gathered during the visit indicated that prisoners against whom force had been used were not always examined by a doctor, and that in those cases where they were seen by a member of the health-care staff, a full examination did not take place and the injuries were not properly recorded (allegations not noted down in full and injuries observed not described in detail). The CPT has already made clear its position concerning this matter in the report in the 2007 visit.<sup>53</sup> The authorities should take the necessary steps to ensure that doctors are provided with the appropriate training to fulfil these specific tasks. Further, it is important to recall that all medical examinations of prisoners should be conducted out of the hearing – and unless the doctor concerned requests otherwise in a particular case – out of the sight of prison officers.

**The CPT reiterates its recommendation that the necessary steps be taken to ensure that medical examinations are carried out in accordance with the requirements advocated by the Committee.**

### 3. Means of restraint

124. In the report on the 2007 visit, the CPT expressed its grave concerns about the use of fixation within the prisons of Catalonia. Regrettably, in the light of the findings of the 2011 visit, the Committee continues to have concerns in relation to the reasons for the resort to fixation, its duration, the methods employed, the lack of supervision and the inadequate recording of the measure.

The cases below represent a sample of the inmates met by the CPT's delegation who had been subjected to the use of means of restraint for prolonged periods in the months prior to the Committee's visit.

i) The delegation met a woman at Brians 1 Prison who had been fixated to a bed in the DERT for female prisoners for 28 hours and 39 minutes continuously, from 6.05 p.m. on 21 April to 10.45 p.m. on 22 April 2011. The inmate stated that she was taken to Cell No. 4 in the DERT, which is not covered by CCTV, in order to undergo a strip search. She claimed that because she did not place her clothes in the correct place, one of the three officers hit her; after she was told she would be placed in a punishment cell, she resisted the officers. She was taken to a provisional isolation cell and placed face down on a bed with her wrists and ankles tied with cloth straps to the sides of the bed. She alleges that she only had her underwear on and was not provided with a sheet until the following morning. According to the records, she was seen by a doctor some five minutes after being fixated and then again, at her request, some two hours later because the restraint position was causing her pain in the "paravertebral cervical"; she was administered an anti-inflammatory pain killer. The doctor also noted a 2 cm lesion around the left knee and bruising on the right knee. Rest was prescribed (!) as well as a cream. Thereafter, there is no record of her being examined by a doctor. According to the records, the investigative judge was sent information on the length of the immobilisation and provisional placement measure only on 27 April 2011 (i.e. several days after the fixation ended).

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<sup>53</sup> See CPT/Inf (2011) 11, paragraph 84.

ii) Another woman at Brians 1 Prison stated that after a fight with an inmate, she was slapped in the face by a prison officer and subjected to a body search. She said that she was escorted to the provisional isolation cell where she voluntarily lay face down on the bed in order to be fixated. She said that she was given nothing to eat or drink and had to urinate in a pouch. She also alleged that after being seen by a doctor, the straps around her wrists and ankles were tightened, and that due to her asthmatic condition she found breathing difficult.

iii). A male prisoner at Brians 1 alleged that on 4 May 2011, when he was accommodated on Module 2, he had told an officer that he could return to his cell without the officer's assistance. Apparently, the officer responded "You think you are tough? Here, it's us who give the order!", and that this officer together with three others pushed him against the wall of his cell, kicked and punched him in the head and on the backside. He was brought to the DERT, where he was fixated, face down, with his wrists and ankles tied with cloth straps to the sides of the bed for a period of six hours. He claims that at one moment his wrists were untied to allow him to drink and eat and to urinate into a bucket; when he had finished, his wrists were strapped to the bed again.

iv) At Lledoners Prison, an inmate who had been placed in the DERT stated that he had pressed the call button in his cell several times, even though he had been told not to, because he was hungry. As a consequence, he was fixated face down with his wrists and ankles tied with cloth straps to the sides of the bed from 9 a.m. to 7 p.m. At one moment, one of his wrists was untied and he was offered some food but as the officers would not untie the other wrist he refused to eat. During the time he was restrained a doctor visited him twice; the second time was some three hours before he was untied. This prisoner said that he was never provided with a reason as to why he had been restrained, and he maintained that he was calm throughout the day and at no time aggressive.

v) An inmate at Joves Prison stated that one month prior to the delegation's visit, he had had a fight with another inmate and was brought to the DERT, where he was placed in a cell and fixated, face down, for two hours, even though he was calm. After one hour, his straps were untied and he was permitted to smoke a cigarette and go to the toilet before being fixated again for another hour.

vi) An inmate interviewed at Modelo Prison alleged that when in Quatre Camins Prison he had had an altercation with some prison officers and had been taken to a solitary confinement cell in the DERT. Subsequently, he had refused to take his prescribed medication, and attempted to break the furniture in the cell; he was then fixated to a bed. According to the official records, the prisoner was untied after a short while and taken to the infirmary to have the injuries he sustained while damaging the cell examined. The doctor's note states that he had several injuries to the left forearm due to self-harm, and a possible fracture of the fifth metacarpus of the left hand. Nevertheless, he was brought back to the DERT and fixated once again to a bed. The official record notes that the fixation lasted from 9.30 p.m. to 10.40 p.m. when the prisoner was untied in the presence of a doctor in order to be transported to hospital. The prisoner in question had previously been diagnosed as having several mental health disorders (schizophrenia, dual personality, anxiety) as well as behavioural problems. Nevertheless, he was fixated in a non-medical setting when he was no longer agitated, and in the knowledge that he was suffering from a possible broken bone.

125. Shortly after the 2007 visit, the Catalan Secretary for the Penitentiary Service, Rehabilitation and Juvenile Justice issued a revised Circular 2/2007 which addressed certain of the concerns raised by the CPT's delegation, such as putting an end to the use of metal cuffs in favour of cloth straps to fixate prisoners, and no longer applying the so-called "superman" position. Nevertheless, the Circular did not address all the concerns raised, notably in respect of the reasons for resort to fixation, and its duration and supervision. Consequently, in its report on the 2007 visit, the CPT called for a comprehensive approach towards the regulation of resort to fixation, and laid out the principles and minimum safeguards to be applied in all prison establishments resorting to fixation<sup>54</sup>. This approach has not been fully adopted by the Catalan authorities.

126. At the time of the 2011 visit, the laws and regulations governing prisons in Catalonia clearly stated that there should only be resort to fixation when no other means could be used to achieve the desired outcome. In this respect, the Catalan authorities pointed to the fact that in the course of 2010 there had only been 384 instances of fixation for an average prison population of some 10,500 inmates.

However, an examination of a number of cases in the prisons visited clearly indicated that other options were not being exhausted before resorting to fixation. In most instances, fixation occurred in the context of a disciplinary offence, as documented in the files – often as a result of verbal abuse from the prisoner or an altercation with prison officers. Further, many prisoners told the delegation that they had voluntarily lain down on the bed in order to be fixated, an action that in itself demonstrates that the restraint was not necessary. Moreover, the measure of fixation was still not being discontinued once the purported reason for its use was no longer present and the person in question had calmed down. In respect of at least some of the cases examined by the delegation, the only conclusion which can be drawn is that fixation was being used to punish the prisoner concerned<sup>55</sup>. Such an approach is totally unacceptable.

127. Moreover, the supervision of fixated persons also remained inadequate. It consisted of a prison officer checking on the prisoner every hour or two, either visually through the door or via CCTV (for example, in the DERTs in Joves and Lledoners Prisons). As prisoners were usually fixated with their feet towards the door and staff members rarely entered the cells, there was no positive interaction between the prison officer and fixated inmate. It should also be noted that no clear explanation was provided as to why in a prison health-care centre (and in hospitals) persons were fixated lying on their back (face up), while in the prison disciplinary and special regime units they were fixated in the supine position (face down).

As regards medical supervision, the same concerns expressed in 2007 were in evidence. A prison doctor was always informed in the event of a prisoner being fixated but the medical supervision was at best cursory. Medical staff did not attempt to engage with prisoners who were fixated, either to verify whether they were agitated or to calm them down. Nor did there appear to be any objection when inmates deemed as having suicidal tendencies or psychiatric problems were fixated in a non-medical setting. Further, the medical records concerning fixated prisoners were sketchy.

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<sup>54</sup> See CPT/Inf (2011) 11, paragraph 91.

<sup>55</sup> For example, at Lledoners Prison, the written comment entered by the head of shift when authorising that an inmate no longer be fixated to a bed was "he repents".

It should also be noted that neither the director of the prison nor the supervisory judge played an active role in supervising immobilisation. In many instances, the supervisory judge was only informed about the measure after it had been terminated or several days later. No follow up was taken by either the director or the judge to determine whether the measure was necessary, proportionate or respected the inmate's dignity.

128. The Catalan authorities should as a matter of urgency review the current approach towards the resort to fixation in prison and put in place far stricter rules governing its application, based upon the principles and minimum standards put forward by the CPT in paragraph 91 of its report on the 2007 visit. In particular, the following issues should be reviewed:

- Regarding its appropriate use, fixation should only be used as a last resort to prevent the risk of harm to the individual or others and only when all other reasonable options would fail to satisfactorily contain those risks; it should never be used as a punishment or to compensate for a shortage of trained staff; it should only be used within a medical setting (i.e. in the health-care centre of a prison).
- Any resort to fixation should always be either expressly ordered by a doctor or immediately brought to the attention of a doctor.
- The position in which a person is fixated should not cause pain.
- The duration of fixation should be for the shortest possible time (usually minutes rather than hours). The exceptional prolongation of restraint should warrant a further review by a doctor. Restraint for periods of days at a time cannot have any justification and would amount to ill-treatment.
- Every instance of fixation of an individual must be recorded in a specific register established for that purpose, in addition to the individual's file (and running record). The entry should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure, the name of the doctor who ordered or approved it, and an account of any injuries sustained by the person or others. This will greatly facilitate both the management of such incidents and oversight into the extent of their occurrence.
- Persons subject to fixation should receive full information on the reasons for the intervention.
- The management of any establishment which might use fixation should issue formal written guidelines, taking account of the above criteria, to all staff who may be involved.

As regards the supervision of persons subject to fixation, an individual subject to fixation should, at all times, have his/her mental and physical state continuously and directly monitored by an identified member of the health-care staff. The supervising staff member should be required to maintain a written running record. Further, the person concerned should be given the opportunity to discuss his/her experience, during and, in any event, as soon as possible after the end of a period of restraint.

**The Committee reiterates its recommendation that the Catalan authorities take the necessary steps to ensure that all the principles and minimum safeguards set out above are applied in all prison establishments resorting to fixation.**



129. Further, at Joves, Lledoners and Modelo Prisons, the CPT's delegation met several inmates who, in the course of fixation, were administered medication by intra-muscular injections<sup>56</sup> without any attempt to seek their consent or explain the purpose of the medication. Several of them claimed that they had explicitly made it known that they did not want to be injected. Such an approach could well be considered as degrading treatment.

**The CPT recommends that the current practice of forced medication of prisoners subject to fixation be ended. Only in those extremely rare cases where the health of the prisoner concerned is at serious risk should medication against a person's will be administered and, in such cases, the measure must form part of a comprehensive, carefully developed, policy on restraint, incorporating the necessary safeguards<sup>57</sup>. The prisoner must, in all circumstances, be informed of the purpose and effects of the medication.**

#### **4. Prisoners subject to special regimes**

130. The categories of prisoner who could be placed in the special regime departments visited were those undergoing a disciplinary sanction; those placed in provisional isolation (A/P) following an incident; those awaiting a decision on a disciplinary sanction<sup>58</sup>; those on protection<sup>59</sup>; and those who had been recategorised to 1<sup>st</sup> Degree (i.e. those who were considered to be "dangerous" or "unadapted to an ordinary prison regime" as defined by Article 10 of the General Organic Law on Prisons).

131. The material conditions in the special departments of Brians 1 (male and female) and Modelo Prisons remain essentially the same as those described in the report in the 2007 visit<sup>60</sup>. They were adequate in Brians 1 Prison but **the cells in Modelo Prison were dilapidated and dirty.**

The purpose-built DERT in Joves Prison consisted of four single-storey accommodation wings each with eight single-occupancy cells. Three of the cells were used for isolation purposes, which meant that the department's capacity was 29; on the day of the visit there were 15 prisoners. The cells were of a good size (12m<sup>2</sup>), and contained in-cell sanitation, a fixed bed and table, a shelving unit and a chair. The ventilation and lighting were sufficient and there was adequate access to natural light. The department also contained several association and interview rooms as well as a gym, and an outdoor exercise yard for each wing.

The DERT in Lledoners Prison was also purpose-built and consisted of five single-storey accommodation wings with a total of 36 single-occupancy cells; five cells were used for isolation purposes. On the day of the visit, the DERT was holding 24 inmates. The cells were of a similar standard of accommodation as those observed in Joves Prison, and the DERT also contained five outdoor exercise yards, as well as classrooms and offices for interviews and medical consultations.

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<sup>56</sup> The drugs injected were one or more of the following: Akineton, Diazepam, Diclofenaca, "Frinova", Haloperidol and "Sinoquan".

<sup>57</sup> See, for example, CPT/Inf (2006) 35, paragraphs 36 to 54, on means of restraint in psychiatric establishments for adults.

<sup>58</sup> See Article 243 of the Prison Regulations.

<sup>59</sup> See Article 75 of the Prison Regulations.

<sup>60</sup> See CPT/Inf (2011) 11, paragraph 94.

None of the outdoor exercise yards in the special departments visited possessed shelter from inclement weather. **Steps should be taken to remedy this shortcoming.**

132. The primary task of the DERT is to accommodate prisoners categorised as 1<sup>st</sup> Degree and to assist them in preparing for reintegration into the ordinary prison population (2<sup>nd</sup> Degree). Within the 1<sup>st</sup> Degree, prisoners may be placed on a regime governed by either Article 93 or Article 94 of the 1996 Prison Regulations. The procedures for placing a prisoner on a special regime have not changed since 2007<sup>61</sup>. Article 93 is reserved for prisoners who are considered “dangerous” (for example, those who have attacked prison officers or been involved in inciting a mutiny among other inmates). The regime for inmates under Article 93 should consist of at least three hours of outdoor exercise every day with one other inmate, and the possibility for three hours of scheduled activities (usually meetings with a psychologist, social worker or educator). Every three months, an evaluation is carried out by the DERT team to consider progressing the inmate to a regime under Article 94 of the Prison Regulations<sup>62</sup>.

Prisoners may be placed directly or as a progression from Article 93 on either a short (90-day) or long (180-day) programme under Article 94, which in each case is divided up into three periods: an initial period (PIO), Phase 1 and Phase 2. The initial period always lasts 15 days, during which time an individual treatment plan (PIT) is drawn up for the inmate following meetings with a psychologist, an educator and the head of the DERT; and the inmate is usually offered two hours of outdoor exercise every day<sup>63</sup>. During Phase 1 (30 or 75 days depending on the programme), inmates are offered at least four hours of out-of-cell activities per day, of which two hours of outdoor exercise takes place with one or two other prisoners. Inmates may have an additional three hours for scheduled activities. During Phase 2 (45 or 90 days), an inmate should be offered a minimum of four hours of out-of-cell activities with up to four other inmates, and participate in group and individual activities. Further, one meal a day may be eaten in a communal dining room.

133. The challenge is to develop appropriate regimes within the DERTs for prisoners categorised as 1<sup>st</sup> Degree. As emphasised by the CPT in its report on the 2007 visit, such prisoners should be able to meet their fellow prisoners in the unit and be granted a good deal of choice regarding their activities. Further, the activities provided should be as diverse as possible (education, sport, work of vocational value, etc.).

It is also important that special efforts be made to develop a good internal atmosphere within high-security units; the aim should be to build positive relations between staff and prisoners. Success in this respect requires that staff assigned to work in such units must be very carefully chosen. They should be appropriately trained, possess highly developed communication skills and have a genuine commitment to the exercise of their skills in a more than usually challenging environment.

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<sup>61</sup> See CPT/Inf (2011) 11, paragraph 99.

<sup>62</sup> As was the situation in 2007, in general prisoners did not spend more than nine months under Article 93.

<sup>63</sup> An inmate who was previously on an Article 93 regime would not have to undergo the 15-day initial period when he or she progressed to an Article 94 regime.

134. At *Lledoners Prison*, the CPT's delegation noted that there was a dedicated team of staff to support prisoners accommodated in the DERT, composed of an educator, a social worker, a psychologist and a manager; they were supported by a teacher, a lawyer and a sports instructor who also worked in other modules. The emphasis was said to be on engaging prisoners. At *Joves Prison*, the DERT possessed a similar team. Opportunities to engage in school and other activities existed for those inmates who were interested. Nevertheless, in both prisons, more could be done to engage with inmates to take advantage of the programmes available within the DERT, and prison officers could play a more proactive role.

By contrast, the opportunities available to prisoners in the special department in *Brians 1 Prison* had hardly developed since 2007. Prisoners were offered the possibility of two hours of outdoor exercise every day, but there were few organised activities available. Further, although a small gym and a room for table tennis had been established, it was reserved for those 2<sup>nd</sup> Degree prisoners ("cleaners") who lived on the unit but were not undergoing a sanction. Prisoners categorised as 1<sup>st</sup> Degree should be offered access to these facilities.

In *Modelo Prison*, inmates placed in the special department were only offered daily access to outdoor exercise; there were still no organised activities on offer, and hence no assistance in preparation for reintegrating into the ordinary wings.

**The CPT recommends that the authorities make every effort to develop the activities and support on offer to 1<sup>st</sup> Degree prisoners in special departments, particularly those of Brians 1 and Modelo Prisons, in the light of the above remarks. If necessary, the Prison Regulations should be amended so as to make this possible.**

135. Further, in all the DERTs, prisoners were not provided with written reasons as to why they had not progressed from an Article 93 to an Article 94 programme; one prisoner at *Lledoners Prison* who had not had any negative reports explained that the educator had merely said "keep your head down". Such an approach is not conducive towards assisting inmates in DERTs progress towards reintegration into an ordinary 2<sup>nd</sup> degree regime. In all the special regime departments, **the consultation process with prisoners should be improved.**

## 5. Conditions of detention

136. The material conditions at *Joves* and *Lledoners Prisons* were of a high standard. Double-occupancy cells were of a sufficient size (11.5m<sup>2</sup>), suitably equipped<sup>64</sup> and with good access to natural light and sufficient artificial lighting and ventilation. Both prisons were in a good state of repair. The accommodation in the modules at *Brians 1 Prison* was also acceptable.

By contrast, *Modelo Prison* was in a state of dilapidation, made worse by the chronic overcrowding, with up to six inmates squeezed into cells of 10m<sup>2</sup>; many of the cells were dirty and infested with cockroaches, and lighting and ventilation were often poor. The CPT has criticised this state of affairs since as far back as the visit in April 1994, and it has pointed out repeatedly that the act of depriving someone of his or her liberty carries with it the responsibility for detaining that person in conditions which are consistent with the inherent dignity of a human being. As far as many prisoners in the *Modelo Prison* are concerned, the authorities have failed to live up to that responsibility to provide decent conditions of detention. The time has come for concrete action to be taken to remedy this situation.

**The CPT calls upon the Catalan authorities to take immediate steps to radically improve the conditions of detention in Modelo Prison; the first step must be to reduce the level of overcrowding.**

137. As regards the regime, at *Joves Prison* a wide range of activities were on offer to inmates (vocational workshops, school, sport and recreation). Each inmate was assigned a tutor and every three to six weeks an evaluation was performed, giving inmates the possibility to obtain additional privileges. Further, after serving a quarter of their sentence inmates could obtain leave and undertake activities outside the prison, and after serving half their sentence, they could be considered for conditional release.

At *Brians 1 Prison*, progress had been made since the 2007 visit to offer a wide range of purposeful activities and to develop more behavioural programmes linked to the specific sentence plans of prisoners. Those prisoners with jobs never worked more than four hours per day as the intention was to provide them with an opportunity to attend school or participate in other activities. However, the number of places in the workshops was limited to 337.

At *Lledoners Prison*, most of the prisoners could take part in education and sports activities, and a number of specialised behavioural programmes were run in the different modules. However, the workshops were not operating at full capacity and the number of places were insufficient for the demand.

As for *Modelo Prison*, the opportunities to participate in purposeful activities were extremely limited.

**The CPT recommends that the Catalan authorities pursue their efforts to offer purposeful activities to all prisoners. In particular, greater efforts should be made at Modelo Prison to provide inmates with a meaningful regime.**

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<sup>64</sup> For example, at *Lledoners Prison*, a typical cell contained one set of bunk-beds, a cupboard, a table and chair, a call system and a fully partitioned sanitary annexe.

## 6. Staff matters

138. For a prison to meet its goal of providing a safe and secure environment combined with assisting inmates to prepare for their reintegration into society, it is essential for each prison to have sufficient numbers of well-trained prison officers deployed in an effective and efficient manner. In general, the numbers of staff present in the prisons visited were sufficient<sup>65</sup>. However, at Lledoners Prison, the delegation was informed that at times some modules, accommodating up to 128 prisoners, would have only two officers on duty, one of whom had to remain in the control room. **Such a staffing ratio is not conducive to promoting a safe environment.**

Further, from the information gathered by the delegation, it would appear that altercations between staff and inmates often arose due to poor communication by prison officers. In particular, in the light of the large percentage of foreign nationals in prison, there is a need for prison officers to receive specialised training in diversity and inter-cultural awareness as well conflict prevention in order to minimise recourse to use of force. In a number of the allegations referred to above relating to ill-treatment or fixation, the initial spark was apparently due to a misunderstanding or lack of communication.

**The CPT recommends that the authorities pay greater attention to improving interpersonal communication skills of prison officers, in the light of the above remarks.**

## 7. Health care

139. The health-care services in the prisons visited were generally of a good standard<sup>66</sup>.

The number of generalist medical staff was on the whole satisfactory. For example, at *Brians I Prison*, the health-care service was composed of 11 full-time general practitioners, one of whom had overall responsibility for the service, 12 nurses and 16 nursing assistants. In addition, the prison was served by a range of external consultants. At *Lledoners Prison*, there were eight full-time general practitioners, nine nurses and nine assistant nurses, once again supported by numerous outside consultants. It is also noteworthy that there was always at least one medical doctor and one nurse on duty throughout the night at both these establishments. At *Joves Prison*, the core health-care staff consisted of four general practitioners, four nurses and two assistant nurses, supported by visiting specialists.

Further, the medical facilities in these establishments were modern, spacious, clean and properly equipped. The electronic medical filing system was well ordered and comprehensive.

140. The CPT's delegation observed that a medical examination was carried out upon admission, usually within a few hours of a prisoner's arrival. It noted that a particular effort was made in the area of prevention of infectious diseases, and was informed that the approach of the medical services was proactive.

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<sup>65</sup> For example, at Joves Prison there were 315 staff (including 55 in the treatment department) for some 370 prisoners.

<sup>66</sup> A full assessment of the health-care service at Modelo Prison was not carried out.

141. From the information received and the delegation's discussions with medical staff, it appeared that the recording of injuries was in principle guaranteed. Doctors are instructed to note all traumatic lesions in the clinical record; a special form must then be completed, including information on the aetiology of the injuries (according to the prisoner's own account). Thereafter, that form should be transmitted to the supervisory judge.

However, from an examination of individual cases, it appeared that practice varied somewhat and it was not at all clear that the forms were always being transmitted to the supervisory judge. Further, the delegation was informed by medical staff that doctors did not draw up any conclusions on the injuries sustained by prisoners; such a practice was confirmed by an examination of the medical files at Lledoners and Modelo Prisons.

**The CPT reiterates its recommendation that steps be taken to ensure that any signs of violence observed when a prisoner is medically screened upon admission are fully recorded, together with any relevant statements by the prisoner and the doctor's assessment (namely, as to the degree of consistency between any allegations made and the injuries observed); this information should be made available to the prisoner and to his or her lawyer. The same approach should be followed whenever a prisoner is medically examined following a violent episode in the prison.**

**Further, whenever injuries are recorded which are consistent with allegations of ill-treatment made by the prisoner concerned (or which even in the absence of an allegation, are clearly indicative of ill-treatment), the relevant form should be systematically completed and transmitted to the supervisory judge.**

142. In the course of the visit, the CPT's delegation learned that the number of inmates being administered psychotropic medication was relatively high; some 30% at Brians 1, Lledoners and Modelo Prisons. Of particular concern was the fact that in some of the cases examined, there did not appear to be any diagnosis of a psychiatric condition. For example, one person interviewed at Lledoners Prison had been administered anti-psychotic medication<sup>67</sup> from 23 April 2010; however, his medical file contained no description of any psychotic symptoms or any other information justifying the prescription of psychotropic medication. Indeed, entries in the file concluded that no symptoms of psychosis could be observed. When the delegation's doctor interviewed the prisoner, he manifested clear side-effects from the medication, including slurred speech and motor retardation.

It goes without saying that the reasons for the prescription of psychotropic medication should be clearly recorded in prisoners' medical files, and the side-effects closely monitored.

**The CPT recommends that reasons for the prescription of psychotropic medication in Brians 1, Lledoners and Modelo Prisons be clearly recorded in prisoners' medical files.**

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<sup>67</sup> A 300 mg depot of Clopixol every 14 days and 10 mg of Olanzapin every day.

## 8. Other issues

### a. discipline

143. The disciplinary system as explained in the report on the 2007 visit remains the same<sup>68</sup>. Despite the formal safeguards in place appearing to be adequate, their practical application continues to be problematic. In the course of the 2011 visit, many prisoners complained of a lack of fairness in the disciplinary procedure, and said that they had no confidence in the appeals system.

Some prisoners complained that they were interviewed immediately after an incident by an instructor, which gave them little time to prepare their defence. And, the instructor charged with taking down the statement from the inmate was usually perceived as being on the side of the prison officers, especially as the inmates believed that their requests for CCTV or other witness statements to be heard were never taken up. Indeed, at times, from interviews with inmates and an examination of the relevant prison documentation, the delegation found that when the evidence was not clear cut, no effort appeared to be taken to obtain witness statements; instead, only the report of the prison officer(s) concerned was considered. Also, as a general rule, inmates were not heard in person by the Disciplinary Commission.

As for the appeal procedure, its lack of suspensive effect (Article 252.2 of the Prison Rules) combined with the fact that a decision could take weeks, resulted in many prisoners stating that an appeal existed on paper only. It should also be noted that a few prisoners alleged that prison officers had made their life in prison more difficult after they had successfully appealed a sanction.

144. The CPT's delegation discovered one example of a breakdown in the disciplinary system, which had caused considerable prejudice to the prisoner concerned.

On 13 May 2011 at Brians 1 Prison, a young woman in the DERT was taken to a provisional isolation cell and fixated to the bed after she had made remarks about self-harming and threats to prison officers. She was fixated to the bed for five hours and fifteen minutes and remained in the cell for 22 hours, after which she was placed in a solitary confinement cell. Three days later the head of the service submitted his report on the incident, and charges under 108b (aggression, threats) and 108d (active resistance) of the Prison Regulations were brought against her and an "Order to open a file" issued. A prisoner has three days to submit a response in writing after receiving the official charges, failing which it is assumed that the prisoner accepts the charges. However, the "Notification of Procedure" had still not been issued to the prisoner some three weeks after the incident, even though a "Proposal for decision of Disciplinary file" suggesting solitary confinement under Article 233 (1A and 1B) had been issued. The prisoner had been given no opportunity to state her side of the story or to contest the version put forward by the prison officers. At the time of the delegation's visit on 2 June 2011, the young woman was still in a disciplinary cell on her own with no access to radio, television, books or magazines. No member of staff had spoken to her from the moment she was taken from her cell to be restrained until the time the delegation interviewed her, nor had she been offered contact with other prisoners.

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<sup>68</sup> See CPT/Inf(2011) 11, paragraphs 108 and 109.

In practice, she was being punished for an offence that officially she had yet to be informed about and which had not yet been decided by the Disciplinary Commission. At the request of the CPT's delegation, the prison authorities ensured that this woman was examined rapidly by a psychiatrist and a psychologist, after which her isolation was ended on medical grounds.

145. Given the findings of its delegation, **the CPT recommends that the operation of the disciplinary system be reviewed so as to ensure that, in practice, prisoners enjoy inter alia the following rights:**

- **to be given sufficient time and information to prepare their defence;**
- **to be heard in person by the decision-making authority (i.e. the Disciplinary Commission);**
- **to call witnesses on their behalf and to cross-examine evidence given against them;**
- **to be heard in mitigation of punishment, in cases where found guilty by the Disciplinary Commission.**

**Further, prisoners who lodge an appeal against a sanction should not be subjected to retaliatory measures.**

**More generally, the CPT recalls that it is the duty of the prison administration to carry out a proper investigation into all incidents that may lead to disciplinary sanctions.**

**The Committee would also like to be informed of the action taken to avoid a repetition of cases similar to the one referred to in paragraph 144.**

146. As regards the question of placing prisoners in provisional isolation following suspicion that they may have committed a disciplinary offence, the CPT is of the opinion that provisional disciplinary isolation prior to a formal charge being brought should not last longer than a few hours, which should be sufficient time for a prisoner to "cool down" after a violent incident. Confinement to a cell for longer than a few hours, in relation to an incident giving rise to a disciplinary procedure, should not occur without the prisoner being charged and being given an opportunity to be heard on the matter and to explain his behaviour to a senior prison officer reporting to the director. **The CPT recommends that the Catalan authorities take the necessary steps to ensure that placement in provisional disciplinary isolation is in line with the above precepts.**

147. In several instances, the disciplinary sanction of solitary confinement was only enforced some six to ten months after the decision by the Disciplinary Commission. In one case, an inmate in Modelo Prison had to serve a disciplinary sanction of four days of solitary confinement from 13 December 2010 for an offence that had occurred in Quatre Camins Prison on 16 May 2010. During the intervening period he had been in solitary confinement for two weeks as a precautionary measure before being categorised as a 1<sup>st</sup> Degree prisoner and transferred to the special regime department in Modelo Prison. There seemed to be no justifiable reason for this delay in the serving of a sanction and, regrettably, its application triggered another violent incident with the prisoner. The approach towards this prisoner and others<sup>69</sup> seemed to run counter to the progressive policy of assisting prisoners to re-adapt to ordinary prison life.

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<sup>69</sup> For example, it was not clear why an inmate at Joves Prison had to serve a series of disciplinary punishments involving multiple periods of solitary confinement (totalling 40 days), between 4 April and 4 June 2011, for offences he had committed in June and August 2010. The prisoner in question had already spent 70 days in solitary confinement between 21 December 2010 and 27 March 2011, and was already on a closed regime.



**The CPT recommends that the time limits for the execution of disciplinary sanctions should be radically reduced, with a presumption for all disciplinary sanctions to be served immediately after they become final; the current periods set out in Article 258 of the Spanish Prison Rules will have to be amended.**

148. According to the General Organic Law on Prisons (Article 76.2) and the Prison Regulations (Article 236), the sanction for a given disciplinary offence may not exceed 14 days of solitary confinement or 42 days when it concerns several serious offences that have taken place at the same time. In the latter instance, the approval of the supervisory judge is required whenever a prison proposes a sanction of solitary confinement for a period greater than 14 days. From the information gathered by the CPT's delegation, such approval is generally granted.

149. Solitary confinement can have an extremely damaging effect on the mental, somatic and social health of those concerned.<sup>70</sup> Therefore, it should only be imposed as a disciplinary sanction in exceptional cases and as a last resort, and for the shortest possible period of time. In the CPT's view, a continuous period of 42 days of solitary confinement as a punishment is totally excessive.

**The Committee recommends that immediate steps be taken to ensure no prisoner is held continuously in solitary confinement as a punishment for longer than 14 days. If the prisoner has been sanctioned to solitary confinement for a total of more than 14 days in relation to two or more offences, there should be an interruption of several days in the solitary confinement at the 14-day stage.**

**The CPT also considers that it would be preferable to lower the maximum possible period of solitary confinement as a punishment for a given disciplinary offence.**

b. complaints and supervision

150. Effective complaints and inspection procedures are basic safeguards against ill-treatment in prisons. Prisoners should have avenues of complaint open to them, both within and outside the prison system, and be entitled to confidential access to an appropriate authority. In addition to addressing the individual case involved, the CPT considers that a careful analysis of complaints can be a useful tool in identifying issues to be addressed at a general level.

At present, prisoners can address complaints to the supervisory judge or the Ombudsman; however, there is no internal complaints system operating in prisons in Catalonia. Instead, inmates can make a request to prison staff which is usually recorded in a book and to which an oral response is generally provided. However, many inmates complained that their requests were either lost by prison staff or a response was never provided. For this reason, other inmates stated that there was no point in making a complaint through the "requests" system.

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<sup>70</sup> See for example, Shalev, S., *A Sourcebook on Solitary Confinement*, Mannheim Centre for Criminology, London 2008 (available electronically at [www.solitaryconfinement.org](http://www.solitaryconfinement.org)).

151. The CPT considers that the current arrangements need to be complemented by a proper internal complaints system; for example, prisoners ought to be able to make written complaints at any moment and place them in a locked complaints box located in each accommodation unit (forms should be freely available); all written complaints should be registered centrally within a prison before being allocated to a particular service for investigation or follow up. In all cases, the investigation should be carried out expeditiously (with any delays justified) and prisoners should be informed within clearly defined time periods of the action taken to address their concern or of the reasons for considering the complaint not justified. In addition, statistics on the types of complaints made should be kept as an indicator to management of areas of discontent within the prison.

**The CPT recommends that the Catalan authorities introduce a proper internal complaints system to complement the existing approach, taking into account the above remarks.**

152. In the report on the 2007 visit, the CPT concluded that the extensive workload of the supervisory judge (*juez de vigilancia penitenciaria*), notably in relation to sentence determination and appeals, rendered the practical application of their inspection and oversight duties unrealistic and hence ineffective. Regrettably, the situation has not improved.

Supervisory judges still do not inspect the DERTs in order to talk to prisoners and staff about the use of means of restraint and the disciplinary process. Indeed, the CPT's delegation learned that the judges rarely visited prisons at all, nor did they enter into direct contact with inmates. Without such visits, it is extremely difficult for judges to provide a balanced opinion on questions relating to the use of mechanical restraint and discipline as the official documentation does not always reflect reality.

**The CPT reiterates its recommendation that the necessary steps be taken to enhance the ability of the supervisory judges to effectively safeguard the rights of prisoners.**

153. The CPT welcomes the fact that the Catalan Ombudsman (*Sindic de Greuges*) carries out visits on a regular basis to prisons, and **it trusts that the Catalan authorities will ensure that the Ombudsman is provided with the necessary resources to fulfil this task.**

c. foreign nationals

154. The number of foreign nationals within Catalan prisons continues to increase<sup>71</sup>, and in some prisons they form the majority of the inmate population; for example, 80% at Joves Prison and 55% at Lledoners Prison. Some recognition of the specific needs of foreign nationals is evident in the efforts made by the authorities to provide information on prison life in languages understood by all persons entering prison. Further, considerable investment has been made in offering Catalan and Castilian language classes to all inmates.

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<sup>71</sup> On 31 May 2011, out of a total Catalan prison population of 10,857, some 4,985 were foreign nationals.

Nevertheless, from the information gathered by the CPT's delegation, it was clear that many foreign nationals felt that they were either consistently misunderstood or that prison officers were prejudiced against them. Consideration should be given to the appointment of one or more dedicated foreign national liaison officers in each prison. Further, concerted efforts should be made to provide foreign nationals with clear information on immigration procedures, through meetings and information packs, and to inform them as soon as possible what will happen to them at the end of their sentence.

**The CPT recommends that the Catalan authorities increase the support provided to foreign nationals entering the Catalan prison system, in the light of the above remarks.**

## **F. Educational Centre of Alzina in Catalonia**

### **1. Preliminary remarks**

155. By virtue of Organic Law 5/2000, the age of criminal responsibility of minors was raised to 18 and a separate juvenile justice system was set up to manage young persons between the ages of 14 and 17 who commit an offence. The Law proposes a series of custodial and non-custodial measures, with placement in a closed detention centre being reserved for juveniles who have committed a serious offence<sup>72</sup>. In Catalonia, there are seven educational centres, including an open regime centre, which together were accommodating some 300 young persons at the time of the delegation's visit.

The Alzina educational centre, located just outside Barcelona, accommodates young persons who have been charged or sentenced for serious offences, as well as "conflictual" juveniles transferred from other educational centres. It has a maximum capacity of 70 and, at the time of the visit, was holding 65 young persons between the ages of 16 and 21. Inmates were allocated to one of five units according to their age and a sixth unit (Anoia) was reserved for disruptive individuals. On average, residents stayed in the centre for two years; they might stay until they reached the age of 21, when they could be transferred to an adult prison. Some 75% of the inmate population were foreign nationals, primarily from Latin America and North Africa. The delegation focused its attention on the Anoia and segregation units (ZIP), and on discipline and use of means of restraint.

### **2. Ill-treatment**

156. Inmates with whom the delegation spoke stated that in general staff treated them well. However, a number of allegations of both verbal and physical ill-treatment by security guards<sup>73</sup> were received. The alleged ill-treatment consisted primarily of slaps, punches and kicks.

For example, a juvenile alleged that, on 9 May 2011, two security guards, who suspected him and his room mate of using drugs, entered their room in the Bejos unit and assaulted them. His room mate was apparently thrown on the floor, kicked and stamped on before being handcuffed and removed to the segregation unit (ZIP) by one of the guards. The juvenile alleges that he was threatened and pushed against the wall by the second guard and, when the other guard returned from the ZIP, that he was kicked, pushed to the floor, handcuffed and dragged along the corridor to a spot where there was no CCTV coverage. The guards allegedly proceeded to punch and kick him several times in the head and stomach. He stated that his injuries (swelling around his eye, cuts to the head and left hand and bruises on both arms) were visible but that the doctor made no comment when he was examined the following day.

When the juvenile complained about the alleged ill-treatment, the instructor responsible for the disciplinary file interviewed the security guards but did not take statements from potential witnesses, including an educator, provided by the juvenile, or examine the CCTV tapes. This does not constitute an effective investigation. On 16 May 2011, the juvenile sent a written complaint to the Minors' Judge No.3 in Barcelona and to the Minors' Prosecutor in Barcelona.

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<sup>72</sup> See Organic Law 5/2000: Article 7 (for types of sanctions) and Articles 9 and 10 (for sentencing criteria).

<sup>73</sup> See also paragraph 128 below.

Subsequently, by letter received on 23 September 2011, the Catalan authorities informed the CPT that on 19 May 2011 the Minors' Judge No.3 had been forwarded the investigation report together with the findings of the doctor relating to examinations of the juvenile on 10, 11, 12 and 13 May. Apparently, no injuries had been noted and the judge dismissed the allegations of ill-treatment brought by the juvenile. Further, the juvenile has stated that he did not wish to appeal the decision.

157. The CPT has repeatedly stressed that whenever allegations of ill-treatment are made, an effective investigation should be carried out. To qualify as effective, such an investigation must *inter alia* be both thorough and comprehensive; it should include, for example, a forensic medical examination, interviews with potential witnesses and, where appropriate, studying CCTV footage.

**The CPT recommends that the Catalan authorities ensure that investigations into allegations of ill-treatment meet the criteria of an effective investigation<sup>74</sup>.**

**The CPT also recommends that the Catalan authorities deliver a clear message to security guards at Alzina Educational Centre that all forms of ill-treatment, including verbal abuse, are not acceptable and will be the subject of severe sanctions.**

### **3. Conditions of detention**

158. The material conditions were on the whole adequate. The Anoaia unit, used as a one-month separation unit for disruptive inmates, possessed the least good conditions. The unit consisted of ten single-occupancy cells off a narrow corridor and adjoined the ZIP. The cells were sufficient in size and access to natural light was acceptable. However, **the ventilation in the unit was poor and the air humid.**

159. As regards the regime, it appeared to be on the whole satisfactory. Every young person had an individual sentence plan drawn up by a multi-disciplinary team and approved by a judge. The plans were reviewed every three months. The framework for the activities offered in the centre is laid down in Circular 2/2008 and includes: education (run by the Ministry of Education); vocational training; behavioural programmes such as the acquisition of social skills and violence reduction, or for sex offenders; recreational activities including sport; and, for individuals over 18 years, the possibility of work. Young persons met by the delegation generally had a favourable opinion of the regime.

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<sup>74</sup> See CPT/Inf (2004) 28, paragraphs 31 to 36.

#### **4. Health care**

160. The health-care team consisted of one general practitioner and one nurse, both full-time, as well as a psychologist, and there was a designated doctor on call during the evenings and at weekends. A psychiatrist visited the centre twice a week and a dentist every fortnight. To sum up, the health-care team appeared to be adequately resourced and the medical facilities were suitably equipped.

However, the CPT's delegation received a number of complaints from juvenile inmates about poor access to dental care. An examination of the records showed that the dentist was, in fact, only seeing two or three patients every two weeks, which was insufficient for the demand.

**The CPT recommends that the hours of presence of a dentist at the centre be increased, to ensure that all inmates requiring dental treatment receive the necessary care in good time.**

#### **5. Staff**

161. The custody and care of juveniles deprived of their liberty is a particularly challenging task; consequently, the staff working with this age group need to be carefully selected and properly trained. In general, it appeared that the staff of the centre were both capable of and committed to working with and safeguarding the welfare of the young people in the centre.

However, the CPT is concerned that the security guards have not undergone the same rigorous selection procedures nor benefited from the necessary training, in particular when it comes to preventing conflict and the use of force and means of restraint. Nor was it clear what rules and regulations governed the work of the security guards.

The CPT's delegation learned that the security guards were employed by a private company and it was told by staff that some of them had a rather aggressive attitude towards the young persons detained in the centre.

**The CPT recommends that steps be taken to ensure that all security guards are carefully selected and properly trained for working with young persons.**

## 6. Discipline and use of means of restraint

162. The disciplinary system in educational centres is surrounded by the same formal safeguards as exist in the adult prison system, with the exception that it is the director of the centre alone who decides on the sanction. The maximum period of solitary confinement permitted is seven days. The Minors' Judge was always informed about disciplinary measures.

An examination of several cases seemed to indicate that, in practice, the disciplinary procedure was not always conducted with the necessary rigour. For example, the delegation met an inmate from Columbia who, after finishing school on 25 May 2011, was strip-searched in the segregation unit on suspicion of possessing drugs. Nothing was found. Nevertheless, he was placed in an isolation cell for two days and given a disciplinary sanction of five days in the segregation unit. Further, all visits from his mother were stopped for a period of two months. An examination of the file revealed that the sanctions were based upon the fact that there was a smell of marijuana in the juvenile's room (which he shared with another boy) and in the visit room in which he had seen his mother. It is clear that evidence of this kind is insufficient ground for imposing any sanction, let alone sanctions as severe as those imposed in this case.

The juvenile appealed the sanction and on 27 May he spoke to the judge via video-conference, who said that he would look into the matter. However, the five days of solitary confinement was not suspended pending the outcome of the appeal, contrary to law<sup>75</sup>.

**The CPT recommends that the Catalan authorities review the application of disciplinary procedures at the Alzina Educational Centre, and that care be taken to ensure that no disciplinary sanction is imposed without proper evidence. Further, it would like to be informed about the outcome of the appeal submitted by the juvenile in the above-mentioned case.**

163. The CPT has very strong reservations as concerns any form of solitary confinement of juveniles and it should only be resorted to as an exceptional measure. A maximum period of seven days of punishment, as provided by Spanish law, is already high. Further, the CPT is concerned that its delegation came across instances of juveniles being placed in solitary confinement as a punishment for periods of 21 days, with only a one-day interval between each successive seven-day period spent in solitary confinement. Such an approach may certainly compromise the physical and/or mental integrity of the juvenile concerned.

**The Committee recommends that immediate steps be taken to ensure no juvenile is held continuously in solitary confinement as a punishment for longer than 7 days. If the juvenile has been sanctioned to solitary confinement for a total of more than 7 days in relation to two or more offences, there should be an interruption of several days in the solitary confinement at the 7-day stage.**

**The CPT also considers that it would be preferable to lower the maximum possible period of solitary confinement which may be imposed on juveniles as a punishment for a given disciplinary offence<sup>76</sup>.**

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<sup>75</sup> See Article 60.7 of the Organic Law 5/2000 on the criminal responsibility of minors.

<sup>76</sup> See also the CPT's 18<sup>th</sup> General Report (CPT/Inf(2008) 25, paragraph 26).

164. As regards use of means of restraint, the files consulted confirmed that juveniles could be fixated for several hours; further, a number of juveniles told the delegation that they had been fixated face down on a bed in the so-called “superman position”<sup>77</sup> for periods of several hours. The CPT considers that fixating juveniles to a bed in an isolation cell is a totally disproportionate use of force and is a measure that is incompatible with the philosophy of an educational centre; and the Committee’s objections are all the stronger when the fixation is applied for several hours and/or in the “superman position”. Resort to this position was supposedly ended by Circular 2/2007 issued by the Secretary for the Penitentiary Service, Rehabilitation and Juvenile Justice following the CPT’s visit in 2007. The delegation also noted that the safeguards surrounding the use of fixation in Alzina were totally inadequate.

The use of fixation as a means of restraint in educational centres should be ended. Instead, alternative methods of means of restraint should be employed which will require staff, especially security officers, to be properly trained and certified in their use. Further, any force used to bring juveniles under control should be the minimum required by the circumstances and should in no way be an occasion for deliberately inflicting pain. Moreover, the CPT considers that the key to reducing resort to the use of restraint lies in a rigorous recruitment policy and intensive training for staff, which places the emphasis on building relationships and solving conflicts without having to resort to force (see paragraph 161 above). If staff do not feel at ease and confident in a juvenile secure setting, resort to use of restraint is likely to be greater.

**The CPT recommends that the Catalan authorities put an end to the use of fixation as a means of restraint in educational centres. Further, it recommends that alternative techniques of control and restraint which are not pain-compliant be introduced, taking into consideration the above remarks.**

## 7. Other issues

165. At the Alzina centre, the delegation received no complaints from young persons in relation to contacts with the outside world, apart from those individuals whose family all lived abroad. In such cases, contact was principally through two ten-minute phone calls every week.

166. As regards complaints and supervision, there were a number of external bodies which visited the centre and to whom young persons could complain, such as the Catalan Ombudsman, the Minors’ Judge and the Minors’ Prosecutor.

Within the centre, juveniles could make requests (and complaints) to the Director or educator. The requests were all registered. However, most juveniles interviewed by the CPT’s delegation stated that they saw no purpose in making a complaint as it would not affect their situation. The feeling was that the word of a staff member would always be believed over that of an inmate. **The CPT would appreciate the comments of the authorities on this matter.**

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<sup>77</sup> The person concerned is placed face down in a supine position, with one arm attached to the bed at the level of the head and the other arm pulled down the length of the body and attached to the bed. Each leg is also strapped to the bed.



## APPENDIX I

### **LIST OF THE CPT'S RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION**

#### **Cooperation between the CPT and the authorities of Spain**

##### comments

- the Committee trusts that the Spanish authorities will now take the necessary steps to ensure that during future visits, CPT delegations are provided with rapid access to the Detention Unit of the Guardia Civil Information Service at its Headquarters in Calle Guzmán el Bueno in Madrid (paragraph 5).

#### **Law enforcement agencies**

##### **Incommunicado detention**

##### recommendations

- the Spanish authorities to carry out a thorough and independent investigation into the methods used by members of the Guardia Civil when holding and questioning persons arrested as presumed participants in one or more of the offences referred to in Article 384 *bis* of the Code of Criminal Procedure (CCP). The CPT wishes to receive within three months a full account of action taken to implement this recommendation (paragraph 15);
- whenever persons allege ill-treatment by law enforcement officials, the prosecutor/judge should record the allegations in writing, order immediately a forensic medical examination (for cases where a forensic examination is not automatically provided) and take the necessary steps to ensure that the allegations are properly investigated (paragraph 16);
- steps to be taken to ensure that three specific safeguards are applied vis-à-vis all persons held in incommunicado detention, namely: the notification to the family regarding the fact of detention and the detained person's whereabouts; the possibility of being visited by a personal doctor together with the forensic doctor appointed by the investigative judge; 24-hour video surveillance and recording of the detention areas (paragraphs 18 and 23);
- persons subject to the provisions of Article 520 bis of the CCP to be systematically brought physically before the competent judge prior to the taking of a decision on the extension of the period of custody beyond 72 hours. If necessary, the relevant legislation should be amended (paragraph 20);
- the Spanish authorities to take the necessary steps to ensure that persons detained incommunicado are allowed to meet a lawyer in private, from the outset of their detention and thereafter as required. They should also be entitled to the presence of a lawyer during any questioning by law enforcement officials (paragraph 21);

- written forensic medical reports to be produced by the doctor and delivered to the judge; further, there should always be a conclusion by the doctor as to the consistency of the findings with any allegations made (paragraph 22);
- the Spanish authorities to establish a code of conduct for interviews, building on the existing rules and regulations. Further, the blindfolding or hooding of persons who are in police custody, including during interviews, to be expressly prohibited. Similarly, the code should expressly prohibit forcing detained persons to conduct physical exercises or to stand for prolonged periods (paragraph 25);
- the Spanish authorities to take the necessary steps to ensure that record-keeping in the context of incommunicado detention by law enforcement officials is substantially improved. Further, the application of video and audio recording should be extended, in the light of the remarks in paragraph 26 (paragraph 26);
- the General Council of the Judiciary to encourage judges to adopt a more proactive approach in respect of the supervisory powers granted to them by Article 520 bis, paragraph 3, of the CCP (paragraph 28);
- the Spanish authorities to proceed without further delay with the refurbishment of the detention cells at Calle Guzman el Bueno. The CPT wishes to be informed within three months of the action taken (paragraph 30);
- immediate steps to be taken to remedy the deficiencies observed in the incommunicado detention cells at the headquarters of the Basque Police (Ertzaintza) in Arkaute; all cells should be equipped with a call bell and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) (paragraph 31);
- arrangements to be made so that persons detained for more than 24 hours can be offered outdoor exercise everyday (paragraph 32).

#### comments

- the positive development not to apply incommunicado detention to minors should be made permanent through amending the relevant primary legislation (paragraph 17);
- it would be preferable if the doctors commented after each medical examination on whether there were any contra-indications to a detained person providing a statement (paragraph 22);
- Spanish law obliges a judge confronted with allegations of ill-treatment either to open a preliminary inquiry or to refer the matter to another competent court. (paragraph 29).

#### requests for information

- comments of the Spanish authorities on the findings made that judges were not making a rigorous examination of the need for incommunicado detention (paragraph 19).

## **Ordinary custody**

### recommendations

- the Spanish authorities to remain vigilant in their efforts to combat ill-treatment by law enforcement officials. In particular, these officials should be reminded that no more force than is strictly necessary should be used when effecting an apprehension and that, once apprehended persons have been brought under control, there can never be any justification for striking them (paragraph 33);
- all unauthorised items to be removed from the premises where persons may be held or questioned (paragraph 34);
- steps to be taken to ensure compliance with the requirements referred to in paragraph 36 in relation to the right of notification of custody (paragraph 36);
- steps to be taken, if necessary in consultation with the Bar Associations, to ensure that ex officio lawyers attend police stations promptly (paragraph 37);
- the right of access to a doctor of one's choice to be adequately reflected in law (paragraph 38);
- law enforcement officials to be reminded to inform apprehended persons of their rights in a language they understand. Further, instructions should be issued providing for detained persons to attest in writing that they have been informed of their rights (paragraph 39);
- the necessary steps to be taken to ensure that all custody records are diligently filled out (paragraph 40);
- the cells in the Madrid Guardia Civil stations of Tres Cantos and Las Rozas to be equipped with a call bell (paragraph 42);
- ventilation in the cells in the National Police Stations of Moratalaz and Puente de Vallecas in Madrid and Puerto Santa Maria to be improved and the cells to be equipped with a call bell (paragraph 43);
- steps to be taken without further delay to improve conditions of detention at the Barcelona District Headquarters of the National Police (paragraph 43);
- arrangements to be made so that persons detained for more than 24 hours can be offered outdoor exercise everyday (paragraph 45).

### comments

- appropriate access rights to computerised custody record systems should be granted to persons performing a monitoring role (paragraph 41);
- the cells at the Madrid Guardia Civil Stations of Tres Cantos and Las Rozas lacked access to natural light (paragraph 42);

- it would be preferable for the cells in the National Police Stations of Moratalaz and Puente de Vallecas in Madrid and Puerto Santa Maria to enjoy better access to natural light (paragraph 43);
- the cells for ordinary detention at the headquarters of the Basque Police (Ertzaintza) in Arkaute had no access to natural light (paragraph 44).

## **Prison establishments**

### **Preliminary remarks**

#### recommendations

- the Spanish authorities to continue to pursue policies designed to put an end to overcrowding in prisons, having regard *inter alia* to the principles set out in Recommendations R (99) 22 and R (2003) 22 as well as other pertinent Recommendations of the Council of Europe's Committee of Ministers (paragraph 47).

#### requests for information

- on the timetable for the transfer of inmates from Nanclares de la Oca to the Araba/Álava Prison, in Iruña de Oca (paragraph 48).

### **Ill-treatment**

#### recommendations

- the Spanish authorities to once again deliver a clear message to all prison officers that all forms of ill-treatment, including verbal abuse, are not acceptable and will be the subject of severe sanctions. Specific measures should be taken to ensure that prison staff at Puerto III Prison do not abuse their authority when performing their duties. Further, an investigation should be undertaken into the case referred to in paragraph 49.i) of the report (paragraph 50);
- steps to be taken to ensure that prison officers are provided with training in recognised control and restraint techniques (paragraph 50).

### **Conditions of detention**

#### recommendations

- the Spanish authorities to pursue their efforts to provide prisoners with a range of purposeful activities (paragraph 53);
- efforts to be made to avoid placing two inmates in cells designed for single-occupancy. This is particularly important at Madrid IV Prison given the limited size of the cells. Further, in any cell accommodating more than one inmate, the in-cell sanitary annex should be partitioned to the ceiling (paragraph 54).

requests for information

- comments of the Spanish authorities on the delegation's findings that the regime in the modules for "conflictual" prisoners was impoverished and that placement in such a module was perceived as a punitive measure (paragraph 52);
- on the operation of the "*modulos de respeto*", in the light of the remarks in paragraph 57 (paragraph 57).

**Means of restraint**

recommendations

- a reminder to be issued to prison staff that handcuffs are not to be used for fixating prisoners to a bed (paragraph 59);
- the Spanish authorities to take the necessary steps to completely review the measure of fixation, in the light of the remarks in paragraphs 60 to 62 (paragraph 62).

**Prisoners detained in special departments**

recommendations

- the cells in the special department at Madrid IV Prison (Module 15) to be provided with better access to natural light and to be equipped with heating (paragraph 64);
- the Spanish authorities to increase their efforts to develop a purposeful regime for inmates placed in special departments (paragraph 65);
- the Spanish authorities to take the necessary steps to ensure that vulnerable inmates placed in special departments are provided with proper care and treatment, and that prisoners with a mental disorder are transferred to an appropriate medical facility (paragraph 66).

comments

- because of their limited size (6m<sup>2</sup>), the cells in the special department at Madrid IV Prison (Module 15) are scarcely adequate for prolonged periods of detention under a regime where the inmate may be confined to the cell for 21 hours or more per day (paragraph 64).

requests for information

- the reasons why two inmates at Puerto III Prison referred to in paragraph 65 took their outdoor exercise alone and were not permitted to associate with other prisoners (paragraph 65);
- on the practical implementation in the special departments of the new measures introduced by the most recent amendments to the Prisons Regulations (Royal Decree 419/2011 of the 25 March 2011) (paragraph 68);

- comments of the Spanish authorities on the delegation's findings that in several cases, the placement of an inmate in a special department appeared to be in contradiction with the stated policy of only placing persons in a special department due to their behaviour and, once in such a department, to work towards progressively integrating the inmates concerned into the ordinary regime (paragraph 68).

### **Health care**

#### recommendations

- the Spanish authorities to take the necessary steps to increase the presence of a psychiatrist in the prisons visited, in particular at Puerto III Prison (paragraph 70).

#### comments

- the Committee trusts that the new instructions issued by the Director of the Prison Administration on 31 May 2011 concerning the registering of injuries will be effectively implemented (paragraph 71).

#### requests for information

- the results of the investigation of the Cadiz State Prosecutor, as well as the conclusions of the autopsy report, concerning an inmate at Puerto III Prison who died on 25 February 2010 (paragraph 72).

### **Other issues**

#### recommendations

- immediate steps to be taken to ensure that no prisoner is held continuously in solitary confinement as a punishment for longer than 14 days. If the prisoner has been sanctioned to solitary confinement for a total of more than 14 days in relation to two or more offences, there should be an interruption of several days in the solitary confinement at the 14-day stage (paragraph 75);
- the Spanish authorities to allow all visits to take place as a rule in open conditions, visits in closed booths to be restricted to those cases when it is justified for security-related reasons (paragraph 76);
- the Spanish authorities to ensure that supervisory judges are encouraged to visit the whole of the prison's premises when carrying out their duties and to enter into contact with both prisoners and prison staff (paragraph 77).

#### comments

- the CPT considers that it would be preferable to lower the maximum possible period of solitary confinement as a punishment for a given disciplinary offence (paragraph 75).

## **Foreign nationals held under aliens legislation**

### **Preliminary remarks**

#### recommendations

- the Spanish authorities to review the material conditions and regime in the Aluche and Zona Franca Centres, and if necessary in other *Centros de Internamiento de Extranjeros* (CIEs), so as to ensure they provide a less restrictive environment (paragraph 80).

#### comments

- the CPT trusts that the remarks made in the visit report will be taken into account when finalising the Rules on the internal functioning of CIEs (paragraph 78).

#### requests for information

- a copy of the Rules on the internal functioning of CIEs once they are adopted (paragraph 78).

### **Ill-treatment**

#### recommendations

- the Spanish authorities to ensure that an effective investigation is initiated promptly whenever there are grounds to believe that ill-treatment by the police may have occurred (paragraph 82);
- all police officers assigned to duties at the Aluche and Zona Franca Centres, as well as other law enforcement officials who may be called upon to intervene in these centres, to be reminded that any form of ill-treatment of detainees – whether physical or verbal – is unacceptable and will be the subject of severe penalties (paragraph 82);
- with a view to combating ill-treatment, the Spanish authorities to take the necessary steps to ensure that the practice in all CIEs is brought into line with the requirements set out in paragraph 83 (paragraph 83);
- the Spanish authorities to put an end to the practice of calling detainees by their detention number; staff in CIEs should address detainees by their names (paragraph 84);
- the Spanish authorities to take the necessary steps to ensure that escort staff are properly trained and deportation operations carefully documented. Further, foreign nationals who have been the subject of an abortive deportation operation should undergo a medical examination as soon as they are returned to detention (paragraph 85).

#### requests for information

- the reasons why an effective investigation was not carried out into the events of 22 May 2011 at the Aluche Centre (paragraph 82);

- the outcome of the investigation into the case of a Bolivian national who had allegedly been ill-treated by police officers during his deportation on 22 June 2011 to Santa Cruz (paragraph 85).

### **Conditions of detention**

#### recommendations

- the permitted occupancy rates in the cells at the Aluche Centre to be reduced so as to guarantee a minimum of 4m<sup>2</sup> living space per detainee. Further, every cell should be equipped with a table and some chairs, as well as a washbasin (paragraph 86);
- the Spanish authorities:
  - to review the provision of food in the Aluche and Zona Franca Centres to ensure in particular that it is adapted to the cultural specificities of the detainee population;
  - to ensure that detainees have sufficient products to maintain their personal hygiene as well as that of the cells in which they are held;
  - to ensure that detainees have ready access to a proper toilet facility at all times, including at night.  
(paragraph 88);
- the Spanish authorities to introduce a range of purposeful activities for persons held in centres for foreign nationals. The longer the period for which persons are detained, the more developed should be the activities which are offered to them (paragraph 89).

#### comments

- the Spanish authorities are invited to equip the cells at the Zona Franca Centre with a table and some chairs (paragraph 87).

### **Health care**

#### recommendations

- the presence of nursing staff during the day to be increased at the Aluche Centre, and the level of health-care resources at the Zona France Centre to be kept under review in the light of the size of the detainee population (paragraph 90);
- steps to be taken at both Centres to ensure that detainees are provided with access to a dentist and a gynaecologist, as required (paragraph 90);
- all medical examinations to be conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of non-medical staff (paragraph 91);
- measures to be taken to provide psychological and psychiatric assistance for the detainee population in CIEs (paragraph 92).



requests for information

- comments of the Spanish authorities on allegations received of pressure being placed upon medical staff by police officers not to provide proper treatment to detained persons (paragraph 91).

**Other issues**

recommendations

- the Spanish authorities to take the necessary steps to ensure that the requirements for staff working in CIE's, as described in paragraph 93, are met (paragraph 93);
- the Spanish authorities to review their approach towards the arrangements for visits in CIEs; in particular, the visiting rooms should be remodelled to enable detainees to meet openly with family and friends visiting them, and the environment should be child-friendly (including a play area for children). Moreover, the amount of visiting time should be increased to at least one hour every week (paragraph 94);
- the necessary steps to be taken to put in place a proper system of recording all incidents involving the use of force and whenever recourse is had to provisional isolation, in the light of the remarks in paragraph 95 (paragraph 95);
- whenever recourse is had to means of restraint in CIEs, the same safeguards to be applied in CIE's as in prison establishments (paragraph 96);
- the Spanish authorities to improve the internal complaints system in all CIEs, by ensuring that a proper record is maintained of every complaint and that detainees receive, within a reasonable time, a reasoned answer to their complaint (paragraph 97).

requests for information

- a copy of the bye-law on inspections, once it is adopted (paragraph 98).

**Law enforcement agencies in Catalonia**

**Ill-treatment and effective investigations**

recommendations

- the Catalan authorities to ensure that a message of zero tolerance of ill-treatment of detained persons reaches all law enforcement officials at all levels (paragraph 102);
- steps to be taken to ensure that every Mossos d'Esquadra officer wears at all times some form of visible identity while on duty (paragraph 106).

comments

- the approach followed by the Internal Affairs Office of the Mossos d'Esquadra in conducting the investigation in a case examined by the delegation did not meet the criteria for an effective investigation (paragraph 103);
- at a minimum, officers under criminal investigation for an act of alleged ill-treatment should, while the case is ongoing, be assigned to duties which do not involve direct contact with the public or detained persons (paragraph 104).

requests for information

- the outcome of the ongoing criminal cases concerning Mossos d'Esquadra officers referred to in paragraph 103 (paragraph 104);
- the current content and status of the Code of Ethics for the Mossos d'Esquadra (paragraph 105);
- the outcome of the internal inquiry carried out by the Department of the Interior relating to the operation of 27 May 2011 in Plaza de la Catalunya and whether steps have been taken to implement the recommendations made by the Ombudsman (paragraph 106);
- the comments of the Catalan authorities on the remarks in paragraph 107 concerning the use of projectile-firing weapons and whether a post-incident evaluation is carried out each time these weapons are deployed and used (paragraph 107).

**Safeguards against ill-treatment**

recommendations

- the necessary steps to be taken to ensure that all persons who exercise the right of notification of custody are subsequently informed whether a communication with a close relative or another third party of their choice has occurred (paragraph 109);
- the Catalan authorities to take the necessary steps to ensure that requests by detained persons to have access to a lawyer are met promptly in all cases and that the persons concerned enjoy the right to meet in private with the lawyer (paragraph 110);
- steps to be taken to improve access to a doctor for persons in police custody, in the light of the remarks in paragraph 111 (paragraph 111);
- steps to be taken to ensure that all medical examinations are conducted out of the hearing and - unless the doctor concerned expressly requests otherwise in a given case - out of the sight of police staff (paragraph 112);
- steps to be taken to ensure that detained persons are provided with a copy of the information sheet in a language they can understand (paragraph 113).

requests for information

- confirmation that persons deprived of their liberty by the police have, in practice, the right of access to a lawyer of their own choice; if a detained person requests access to a specific lawyer, the Bar Association should be contacted only if that lawyer cannot be reached (paragraph 110).

**Conditions of detention**

recommendations

- the Catalan authorities to take the necessary steps to remedy the deficiencies observed in Mossos d'Esquadra establishments and described in paragraphs 114 to 116 (paragraph 116);
- the Catalan authorities to establish standards for police detention facilities, taking due account of the Committee's criteria; in particular, detention areas in modern purpose-built police stations should enjoy access to natural light and proper ventilation, and be equipped with an exercise yard (paragraph 116).

**Prison establishments in Catalonia**

**Preliminary remarks**

comments

- the CPT encourages the Catalan authorities to pursue a multi-pronged approach towards eradicating prison overcrowding (paragraph 117).

requests for information

- updated information on the measures being taken to eradicate prison overcrowding (paragraph 117).

**Ill-treatment**

recommendations

- the Catalan authorities to deliver a clear message to all custodial staff that all forms of ill-treatment, including verbal abuse, are not acceptable and will be the subject of severe sanctions. More specifically, prison officers must be made fully aware that no more force than is strictly necessary should be used to control violent and/or recalcitrant prisoners and that once prisoners have been brought under control, there can be no justification for them being struck. In this context, the authorities should ensure that all prison officers are provided with training in recognised control and restraint techniques (paragraph 122);
- the necessary steps to be taken to ensure that medical examinations are carried out in accordance with the requirements advocated by the Committee (paragraph 123).

requests for information

- the outcome of the investigation into the case of alleged ill-treatment of an inmate in the special regime department (DERT) at Lledoners Prison (paragraph 121).

**Means of restraint**

recommendations

- the Catalan authorities to take the necessary steps to ensure that all the principles and minimum safeguards set out in paragraph 128 are applied in all prison establishments resorting to fixation (paragraph 128);
- the current practice of forced medication of prisoners subject to fixation to be ended. Only in those extremely rare cases where the health of the prisoner concerned is at serious risk should medication against a person's will be administered and, in such cases, the measure must form part of a comprehensive, carefully developed, policy on restraint, incorporating the necessary safeguards. The prisoner must, in all circumstances, be informed of the purpose and effects of the medication (paragraph 129).

**Prisoners subject to special regimes**

recommendations

- the authorities to make every effort to develop the activities and support on offer to 1<sup>st</sup> Degree prisoners in special departments, particularly those of Brians 1 and Modelo Prisons, in the light of the remarks in paragraph 134. If necessary, the Prison Regulations to be amended so as to make this possible (paragraph 134).

comments

- the cells in the special department at Modelo Prison were dilapidated and dirty (paragraph 131);
- steps should be taken to equip the outdoor exercise yards in the special departments visited with shelter from inclement weather (paragraph 131);
- the consultation process with prisoners should be improved in all the special regime departments (paragraph 135).

**Conditions of detention**

recommendations

- the Catalan authorities to take immediate steps to radically improve the conditions of detention in Modelo Prison; the first step must be to reduce the level of overcrowding (paragraph 136);

- the Catalan authorities to pursue their efforts to offer purposeful activities to all prisoners. In particular, greater efforts should be made at Modelo Prison to provide inmates with a meaningful regime (paragraph 137).

### **Staff matters**

#### recommendations

- the authorities to pay greater attention to improving inter-personal communication skills of prison officers, in the light of the remarks in paragraph 138 (paragraph 138).

#### comments

- at Lledoners Prison, the staffing ratio in some modules was not conducive to promoting a safe environment (paragraph 138).

### **Health care**

#### recommendations

- steps to be taken to ensure that any signs of violence observed when a prisoner is medically screened upon admission are fully recorded, together with any relevant statements by the prisoner and the doctor's assessment (namely, as to the degree of consistency between any allegations made and the injuries observed); this information should be made available to the prisoner and to his or her lawyer. The same approach should be followed whenever a prisoner is medically examined following a violent episode in the prison (paragraph 141);
- whenever injuries are recorded which are consistent with allegations of ill-treatment made by the prisoner concerned (or which even in the absence of an allegation, are clearly indicative of ill-treatment), the relevant form to be systematically completed and transmitted to the supervisory judge (paragraph 141);
- the reasons for the prescription of psychotropic medication in Brians 1, Lledoners and Modelo Prisons to be clearly recorded in prisoners' medical files (paragraph 142).

### **Other issues**

#### recommendations

- the operation of the disciplinary system to be reviewed so as to ensure that, in practice, prisoners enjoy inter alia the following rights:
  - to be given sufficient time and information to prepare their defence;
  - to be heard in person by the decision-making authority (i.e. the Disciplinary Commission);
  - to call witnesses on their behalf and to cross-examine evidence given against them;
  - to be heard in mitigation of punishment, in cases where found guilty by the Disciplinary Commission (paragraph 145);

- the Catalan authorities to take the necessary steps to ensure that placement in provisional disciplinary isolation is in line with the precepts set out in paragraph 146 (paragraph 146);
- the time limits for the execution of disciplinary sanctions to be radically reduced, with a presumption for all disciplinary sanctions to be served immediately after they become final; the current periods set out in Article 258 of the Spanish Prison Rules will have to be amended (paragraph 147);
- immediate steps to be taken to ensure that no prisoner is held continuously in solitary confinement as a punishment for longer than 14 days. If the prisoner has been sanctioned to solitary confinement for a total of more than 14 days in relation to two or more offences, there should be an interruption of several days in the solitary confinement at the 14-day stage (paragraph 149);
- the Catalan authorities to introduce a proper internal complaints system to complement the existing approach for external complaints, taking into account the remarks in paragraph 151 (paragraph 151);
- the necessary steps to be taken to enhance the ability of the supervisory judges to effectively safeguard the rights of prisoners (paragraph 152);
- the Catalan authorities to increase the support provided to foreign nationals entering the Catalan prison system, in the light of the remarks in paragraph 154 (paragraph 154).

#### comments

- prisoners who lodge an appeal against a disciplinary sanction should not be subjected to retaliatory measures (paragraph 145);
- it is the duty of the prison administration to carry out a proper investigation into all incidents that may lead to disciplinary sanctions (paragraph 145);
- the CPT considers that it would be preferable to lower the maximum possible period of solitary confinement as a punishment for a given disciplinary offence (paragraph 149);
- the CPT trusts that the Catalan authorities will ensure that the Ombudsman is provided with the necessary resources to fulfil the task of carrying out visits to prisons (paragraph 153).

#### requests for information

- the action taken to avoid a repetition of cases of dysfunctioning of the disciplinary system similar to the one referred to in paragraph 144 (paragraph 145).

## **Educational Centre of Alzina in Catalonia**

### **Ill-treatment**

#### recommendations

- the Catalan authorities to ensure that investigations into allegations of ill-treatment meet the criteria of an effective investigation (paragraph 157);
- the Catalan authorities to deliver a clear message to security guards at Alzina Educational Centre that all forms of ill-treatment, including verbal abuse, are not acceptable and will be the subject of severe sanctions (paragraph 157).

### **Conditions of detention**

#### comments

- the ventilation in the Anovia unit was poor and the air humid (paragraph 158).

### **Health care**

#### recommendations

- the hours of presence of a dentist at the centre to be increased, to ensure that all inmates requiring dental treatment receive the necessary care in good time (paragraph 160).

### **Staff**

#### recommendations

- steps to be taken to ensure that all security guards are carefully selected and properly trained for working with young persons (paragraph 161).

### **Discipline and use of means of restraint**

#### recommendations

- the Catalan authorities to review the application of disciplinary procedures at the Alzina Educational Centre, and care to be taken to ensure that no disciplinary sanction is imposed without proper evidence (paragraph 163);
- immediate steps to be taken to ensure no juvenile is held continuously in solitary confinement as a punishment for longer than 7 days. If the juvenile has been sanctioned to solitary confinement for a total of more than 7 days in relation to two or more offences, there should be an interruption of several days in the solitary confinement at the 7-day stage (paragraph 164);

- the Catalan authorities to put an end to the use of fixation as a means of restraint in educational centres. Alternative techniques of control and restraint which are not pain-compliant to be introduced, taking into consideration the remarks in paragraph 164 (paragraph 164).

comments

- the CPT considers that it would be preferable to lower the maximum possible period of solitary confinement which may be imposed on juveniles as a punishment for a given disciplinary offence (paragraph 163).

requests for information

- the outcome of the appeal submitted by the juvenile in the case referred to in paragraph 162 (paragraph 162).

**Other issues**

requests for information

- the comments of the authorities on the lack of confidence of juveniles in the complaints system (paragraph 166).



**APPENDIX II**

**LIST OF THE AUTHORITIES AND NON-GOVERNMENTAL ORGANISATIONS  
WITH WHICH THE CPT'S DELEGATION HELD CONSULTATIONS**

**A. Ministerial authorities**

**Ministry of the Interior**

Antonio CAMACHO VIZCAÍNO	Minister <sup>78</sup>
Mercedes GALLIZO LLAMAS	Director-General of Penitentiary Institutions
Maria Angeles GONZÁLEZ GARCÍA	Technical General Secretary
Francisco JAVIER VELÁZQUEZ	Director-General of the National Police and Civil Guard
Antonio CERROLAZA GÓMEZ	Deputy Technical General Secretary, CPT liaison officer
Blanca BRENOSA SAEZ DE IBARRA	CPT liaison officer

**Office of the Representative of the Central Government in Catalonia**

Francisco ALGUACIL FERNÁNDEZ	National Police Commissioner and CPT liaison officer
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**B. Other national authorities**

Ángel JUANES PECES	President of the Audiencia Nacional
Ramón SÁEZ	Judge of the Audiencia Nacional
Cándido CONDE-PUMPIDO TOURON	Prosecutor-General
Luis Francisco DE JORGE MESAS	Head of International Relations Section, General Council of the Judiciary
Gabriela BRAVO	Spokesperson of the General Council of the Judiciary
Carmen COMAS MATA MIRA	Head of the Private Office of the Spanish Ombudsman and Head of the National Prevention Mechanism

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<sup>78</sup> Secretary of State for Security at the time of the visit.

**C. Authorities of the autonomous communities**

**Autonomous Regional Government of Catalonia (Generalitat de Catalunya)**

***Department of Interior***

Felip PUIG I GODES	Conseller
Xavier GIBERT I ESPIER	Secretary General
Manel PRAT I PELÁEZ	Director General of the Mossos d'Esquadra
Ramon TOMÀS RODRÍGUEZ	Head of the Internal Affairs Division, Mossos d'Esquadra
Jaume GARCIA VALLS	Head of Organisation and Quality Control, Mossos d'Esquadra
Ferran LÓPEZ NAVARRO	Coordinator of Police Operations, Mossos d'Esquadra and CPT liaison officer

***Department of Justice***

Ms Pilar FERNÁNDEZ I BOZAL	Conseller
Mr Ramon PARÉS GALLÉS	Director General of Penitentiary Services
Mr Quim CLAVAGUERA I VILÀ	Director General for Community Sanctions and Juvenile Justice

***Sindic de Greuges (Office of the Ombudsman)***

Rafael RIBÓ I MASSÓ	Ombudsman
Judith MACAYA ALSINA,	Director of the Private Office
Ignaci GARCIA I CLAVEL	Director of Public Security and Social Relations

**Basque Country (Eusko Jaurlaritz)**

Rafa SAINZ DE ROSAS	Thematic Co-ordinator, Office of the Ombudsman
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**D. Non-governmental organisations**

Coordinator for the Prevention of Torture

Behatokia

Madrid Free Lawyers Association (ALA)

Observatory on the Prison System and Human Rights (OSPDH), University of Barcelona