



CPT/Inf (2013) 7

Response

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

from 31 May to 13 June 2011

The Spanish Government has requested the publication of this response. The report of the CPT on its May/June 2011 visit to Spain is set out in document CPT/Inf (2013) 6.

Strasbourg, 30 April 2013

CONTENTS

Spanish Government Report in response to the comments, recommendations and requests for information formulated by the Committee in paragraphs 15 and 30	5
Spanish Government Report in response to all the comments, recommendations and requests for information formulated by the CPT	19
I. INTRODUCTION.....	21
II. GENERAL REMARKS.....	21
III. SPECIFIC REMARKS (FOLLOWING THE SECTIONS OF POINT II OF THE CPT REPORT)	22
Incommunicado regime.....	25
Detention and custody ordinary regime	59
Prisons.....	71
Regimes of deprivation of liberty under the legislation on foreigners.....	120
The security forces and corps in Catalonia	138
Prisons in Catalonia.....	150
“L’Alzina” juvenile education centre (Catalonia).....	168

**Spanish Government report in response to the comments,
recommendations and requests for information formulated
by the Committee in paragraphs 15 and 30**



In pursuance of Article 10 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereafter CPT) presented to the Spanish Government the report relating to its periodical visit to Spain from 31 May to 13 June 2011. This was the 12th visit carried out by the Committee and the 6th periodical one.

As a result of the information gathered in the detention centres visited by the Committee, the CPT, in the above-mentioned report, formulates recommendations and suggestions to the Spanish Government, with a view at ensuring a full compliance with the standards established by the Committee.

In the following pages the Spanish authorities provide a response to the remarks made in paragraphs 15 and 30 within the 3 month deadline established by the CPT.

Paragraph 15 (Special legal framework of safeguards during the incommunicado detention)

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 Code of Criminal Procedure (hereafter CCP). The CPT wishes to receive within three months a full account of the actions taken to implement this recommendation.

The paragraph seems to point out two different aspects: on the one hand, the methods used by the Guardia Civil when holding and questioning persons arrested as presumed members of armed groups or as presumed terrorists or defaulters; on the other hand, the need or convenience for amending the investigation procedure established in Spain for the above-mentioned offences.

A) The first remark seems to question the methods used by the Guardia Civil when instituting the procedure.

1. Article 104 of the Spanish Constitution regulates the Guardia Civil, as well as the National Police, as Security Forces serving under the Government and having as their mission the protection of the free exercise of rights and liberties and the guaranteeing of the safety of citizens.

The legal system defines both their functions and the limits that the members of these forces shall respect. Therefore, Security Forces shall abide by the principles established in Article 5 of the Ley



Orgánica¹(Act) 2/1986, of 13 March, on Security Forces – including some directly related to the "treatment of detainees" – as well as the laws regulating their disciplinary regime. These ones describe as serious and very serious misdemeanours those behaviours that could be considered as amounting to ill-treatment, without prejudice to the potential criminal responsibilities (Ley Orgánica 11/2007, of 22 October, regulating the Disciplinary Regime of the Members of the Guardia Civil and Ley Orgánica 4/2010, of 20 May, regulating the Disciplinary Regime of the Members of the National Police). Such criminal responsibility is regulated in the Spanish Criminal Code. Its Article 174 punishes ill-treatment and torture inflicted in the framework of a criminal proceeding or as a result of it. The definition of the crime also includes the preliminary investigations, although these are carried out without judicial intervention. Moreover, apart from the penalty of prison (from 2 to 6 years in case of serious injury; from 1 to 3 if in case of not serious offence), torture is always punished with disqualification from public service from 8 to 12 years.²

Furthermore, Article 176 regulates the hypothesis that ill-treatment is inflicted not by an officer, but a third person. In this case, the penalty of the former will be the same imposed to the person who has directly inflicted ill-treatment.

In addition, Article 177 establishes: "*Except when the attack against moral integrity is already specially punished by the law, should ill-treatment also cause injury or endanger the life, physical safety, health, sexual freedom or property of the victim or a third person, those facts will be separately punished by the corresponding penalty for the crimes or offences committed*".

2. Spain has made significant progress in preventing and eradicating ill-treatment in the field of Security Forces. Besides the new legislative measures introduced, complementary means have also been adopted with a view at updating and specifying those legal dispositions, so that they can be better understood and applied by the individuals concerned.

This is the case of the Instruction of the Secretary of State for Security 12/2007 regulating the behaviour of Security Forces in order to safeguard the rights of detainees or persons placed under police custody. This Instruction details the behaviour and limits by which Security Forces shall abide under the existing legislation, in order to prevent their actions from undermining any of the rights of the detainee.

¹ Under the current Spanish Constitution of 1978, a Ley Orgánica has an intermediate status between that of an ordinary law and of the Constitution itself. It must be passed by a qualified majority of the Congress of Deputies. The Spanish Constitution specifies that some areas of law shall be regulated by this procedure, such as the Laws of Development of Fundamental Rights and Freedoms contained in the first section of Chapter Two of Title I of the Constitution.



3. Furthermore, it is worthy to remind that Security Forces are allowed to use force under the following exceptional circumstances: when an individual resists an arrest, when the detention is carried out under circumstances that may endanger citizens' security or that may involve a potential risk for the life of the officer, his/her physical safety or for the physical safety of a third person. In most cases detentions have to overcome the resistance of the person concerned. However, it must be highlighted that any legitimate use of force needs to be proportionate, consistent and appropriate. The use of force is not a discretionary and unlimited power; therefore it shall abide by compulsory limits and restrictions.

4. The commitment from Spain to the prevention and eradication of any behaviour amounting to ill-treatment by any public authority and, in particular, by the Security Forces is given concrete shape on a yearly basis in the training plans adopted both by the Police and the Guardia Civil. Such plans strengthen the prosecution and facilitate the eradication of ill-treatment.

5. As regards the specific cases referred to in the CPT report, after consultation with the Directorate-General of the Guardia Civil, it can be stated that all the detentions carried out by Intelligence Service of the Guardia Civil, whose aim is to fight terrorism, fully comply with the legislation in force in Spain and with the content of the above-mentioned Instruction of the Secretary of State 12/2007. This Instruction establishes clear and updated rules aimed at safeguarding the rights of the detainee. Such rights have been fully respected while taking statement from the detainee: a record of the time at which interviews start and end has been systematically kept, the detainee has been informed of the identity of the officers present at the interview, any request made by the detainee or his/her lawyer has always been recorded and finally, the detainee has been informed of the possibility to have a period of rest during the interview in case of fatigue.

B) Secondly, 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 and placed under incommunicado detention as presumed participants in terrorist groups.

In order to define the concept of a "*thorough and independent*" investigation, in paragraph 16 the CPT refers to the European Court of Human Rights, according to which any investigation for alleged ill-treatment should be prompt, independent and effective.

As regards independence, the Spanish Constitution foresees the existence of an independent Judicial Power. Article 117 of the Constitution establishes that "*Justice emanates from the people and is*

² See Article 174.1 of the Spanish Criminal Code.



administered in the name of the King by Judges and Magistrates who are members of the Judicial Power and are independent, irremovable, responsible, and subject only to the rule of the law.

Furthermore, the Ley Orgánica 6/1985, of 1 July, regulating the Judiciary, establishes under Article 12.1 that while exercising their judicial powers, Judges and Magistrates are independent from both other courts and the governing bodies of the Judiciary, including the General Council of the Judiciary. This aspect has been stressed by the Constitutional case law, for instance in the ruling 108/1996, of 13 June of the Spanish Constitutional Court, where it declares: "*It is a fact that the independence of the Judiciary shall be respected not only by the members of internal bodies of the Judiciary organisation, but by every single individual or institution*".

The third paragraph of Article 12.1 adds that no general or particular instruction concerning the implementation or interpretation of the legal system shall be issued, either by the Judges and Magistrates, while exercising their judicial powers, or by their governing bodies or the above-mentioned General Council of the Judiciary.

Such independence is obviously fully respected in the framework of the criminal proceedings. In this regard, the Spanish system follows the Napoleonic tradition. This means that, unlike other countries such as Italy, Germany and Portugal, in Spain the criminal investigation is carried out by a specific body that is different from the one in charge of ruling – except proceedings where a minor is concerned, in which case the Prosecutor is the one in charge of the investigation. When dealing with terrorist crimes, the investigation is carried out by the Examining Magistrates' Courts, while the judicial body responsible for sentencing is the Audiencia Nacional³ (Article 65.1 of the Ley Orgánica 6/1985, of 1 July, regulating the Judiciary). As a result, two different judicial bodies play different roles. This represents a basic proceeding safeguard, ensuring the compliance with the principle of independence of the Judiciary.

Concerning the question raised by the CPT relating to those cases of ill-treatment alleged by people placed under incommunicado detention, in the Spanish system the judicial intervention represents a quasi-permanent safeguard measure in favour of detainees.

1. As regards the detention, Article 55.2 of the Spanish Constitution establishes the need for judicial intervention when rights are suspended in relation to presumed participants in terrorist groups. Article 520 bis of the CCP establishes that "*during the detention, the Judge shall be entitled at any time to require information*



about the conditions of the detainee and verify them personally or by delegating this task to the Examining Magistrate of the judicial district where the detainee is being held". This has been also confirmed by the Constitutional Court in its judgement 199/1987, of 16 December ("The Court is entitled [...] to verify the legality and the conditions of detention, with a view at ensuring the compliance with the constitutional rights of the detainee, not only those included in Article 24, but also any other constitutional right that may be involved in each particular case. Provided that its jurisdiction covers all the national territory, the Judge is allowed to verify personally the detainee's conditions [...] or to delegate this task to the Examining Magistrate of the judicial district where the detainee is being held").

As a result, during the period of incommunicado detention, the Judge is entitled to verify the conditions of detention, taking into account the information provided on a regular basis in the reports elaborated by the specialists in forensic medicine in charge, *i.e.*, of the assistance and medical review of detainees brought before a court. These experts have two main functions, as professionals of medical care, as well as forensic experts. Concerning this second task, they gather and evaluate data with a view at presenting a useful forensic interpretation of the information to the recipients of their reports, in pursuance of both the Action Protocol adopted as Order of 16 September 1997, regulating the development of the medical review of detainees, and the Medical Ethics and Deontological Code of the Medical Association of 1999⁴.

However, it must be underlined that the above-mentioned power of the Judge is facultative. This implies that the judicial body cannot be obliged to exercise such power. Furthermore, the Court is the only one that has legitimacy to use it when, on the basis of the reports, claims or other kind of evidence, it considers that there are reasonable grounds for suspecting the existence of behaviours amounting to ill-treatment.

2. Moreover, the Spanish legal system foresees additional safeguards in relation to the design of mechanisms that facilitate the detection of ill-treatment inflicted by members of the Security Forces on detainees in incommunicado. In this respect, Article 269 of the CCP establishes the following: "Once filed, the claim will be immediately verified either personally by the Judge or by the officer to whom the judicial body has delegated this task, unless the behaviour described in it does not amount to a crime or the claim appears to be openly false. In both cases, the Judge or officer shall not open any proceeding, without prejudice to the responsibility of those that may wrongfully reject a claim".

³ The Audiencia Nacional is the Spanish National Criminal Court that has nation-wide jurisdiction. It is an appeal and 1st instance Court for those matters established by the organic law of the Judiciary and it specifically tries terrorism crimes.

⁴ The content of the forensic experts' report will be included in the response of the Spanish authorities within the six month deadline established.



As a result of what has been stated above, although the criminal proceeding for alleged ill-treatment shall be handled by the relevant judicial body (either the Examining Magistrates' Courts or the *Audiencia Nacional*), the claim sets up either administrative or judicial proceedings, or in some cases both. However, it must be highlighted that the administrative investigation shall be suspended until the judicial body has ruled over the matter. Should a judicial proceeding start, this will be handled by a different judicial body.

During the judicial investigation, the Judge orders the Criminal Police to carry out activities aimed at verifying the allegations. When acting as Judiciary Police, its members comply only with the orders and instructions of the Court, without having to report to their immediate superior. Furthermore, for greater security, the usual proceeding foresees that, in response to an order of the Court, the investigation may be entrusted to experts different from the Judicial Police group to which the alleged perpetrator of ill-treatment belongs.

In general, the mere "possibility" that an unlawful act has been committed is enough to implement the procedural mechanism (ruling 83/2003 of 20 June of the *Audiencia Provincial*⁵ of Vizcaya). Thus, when a complaint is made, the Examining Magistrate do not verify the veracity of the facts but he is only required to determine if the behaviour could amount to an offence and assess if its investigation is within his competence. This is specifically noted in Judgement of 22 December 2004 of the *Audiencia Provincial* of Guipúzcoa: "*An ab initio dismissal is an exception that can only be adopted when the investigation clearly and objectively shows that the facts being investigated are unsubstantiated or that those proven do not amount to an offence*".

If the investigation of alleged ill-treatment and torture does not result in a judicial procedure and is carried out in the administrative sphere, police forces have their own units specialized in investigating internal affairs and potential disciplinary responsibilities. Alongside these units, and for greater security, there is an *ad hoc* administrative body, the *Inspección de Personal y Servicios de Seguridad*⁶ reporting to the Secretary of State for Security which is fully independent from police forces and has extensive powers and the necessary resources to investigate alleged misdemeanours.

A first conclusion can then be drawn: the Spanish legal system provides for concrete mechanisms that make Justice to act in case of any ill-treatment complaint, including those made by inmates held under incommunicado detention.

⁵ The *Audiencia Provincial* is the principal Court of a Spanish judicial district known as "provincia".

⁶ *Inspección de Personal y Servicios de Seguridad* is the unit responsible for the inspection, control and assessment of the services, centres and units of both the Directorate-General of the Guardia Civil and the Directorate-General of the National Police, as well as for the fulfilment of the tasks entrusted to their members.



The CPT does not refer to any single case of tortures ruled as proven by a final judgement. In fact, as mentioned in previous reports to the CPT, the fact of lodging ill-treatment complaints is a strategy used systematically by ETA's members in order to achieve media repercussion and make secret identities of Security Forces' officers fighting terrorism to be revealed.

A recent example is the case of the judgement concerning the Guardia Civil officers who had been reported for torture and mistreatment inflicted on two members of ETA (Igor Portu and Mattin Sarasola). At first, 4 out of the 15 officers participating in the 6th January 2010 operation, in which the two terrorists were arrested, were sentenced by the *Audiencia provincial of Guipuzcoa* in Judgement of 30 December 2010 to not less than 2 years and not more than 4, and to 8 years of disqualification from public service for inflicting serious torture and injuries. Subsequently, as a result of an appeal, the Supreme Court, in its judgement 1136/2011 delivered on 2 November, acquitted the four of them considering not to be adequately proven that those crimes had been committed.

The ruling considers as documentary proof a technical report of the Guardia Civil which states that "*there is a strategy of submitting false allegations, something that is taught in the so-called "eskola" [school] and that all activists are obliged to implement*".

Another document from a different source is taken into consideration as evidence alongside that one. It is a document seized to another member of the cell to which the 2 ETA convicted belonged and entitled "*Haciendo frente a la detención*" [Facing arrest]. In the book, perfectly known by the plaintiff, the following answers (literally quoted in the Supreme Court's judgement) are given to the members of the group for the question "Why to make a complaint?"

- *"This way of acting has been and must always be a rule for every single member ..."*
- *If detained in the street in a normal way, then leave the blows for the moment you are stepping into the police station or when you are being placed into the police car. Shout as if you were being killed, shout your name and wrestle as much as you can, we will find witnesses later on who will make your story credible ..."*
- *"Try to provoke situations that can be used to raise people awareness, for example: ... being admitted to clinics or hospitals, ... all this facilitates the subsequent job to be made in mass media, with lawyers, *kale borroka*?..."*

⁷ This term refers to street fighting by ETA's supporters.



- “Report as many txacurras (police officers) as possible, there is no limit for imagination here, develop it without fear, there won’t be any reprisals against you for false complaints...”
- “Talk about interrogations, beatings, plastic bags placed over your heads (“bolsa”), near drowning (“bañera”), a concrete block with rings on each side to which one is fixated (“potro”), psychological torture...”
- “Once before court, deny everything, just mention the tortures, don’t worry about being a bore, in the end that will bear its fruit ...”

But moreover the simple fact of submitting the complaint, even if subsequently it is proven to be false, leads to the identification of the police officers, which is clear proof that the whole situation is a strategy.

When a terrorist declares to have been ill-treated at the police station, the Examining Magistrate is obliged to immediately summon the police officer to whom the complaint has been made in order to give evidence as a suspect. When the oral proceedings start it is obligatory to reveal which police forces the accused officer belongs to (Guardia Civil or National Police) and disclose his/her name and surname/surnames. This is demonstrated by the Lleida Audiencia Provincial’s judgement of 19 April 2004 and the Vizcaya Audiencia Provincial’s ruling of 20 June 2003, in which accused police officers are denied the right to identify themselves using their professional identification number. This was also provided for in the Agreement of the governing body of the Audiencia Provincial of Vizcaya of 1 October 2009 which established the following: “*except in the special case referred to in Article 762.7 of the CCP allowing a law enforcement officer involved in criminal proceedings as witness to identify him/herself by his/her professional identification number, and in the exceptional case of protection of witnesses, law enforcement officers participating as complainant or accused, or in second instance as appellant or appellee, must submit to the general regulation identifying themselves by their names, surnames and ID card (Articles 388 and 436 of the CCP)*”.

In conclusion, this possibility and the orders given by the terrorist organization are conducive of ill-treatment complaints being issued systematically.

3. It should be remembered that even in the case of laying on the file or dismissal of the complaints submitted, there is the possibility to lodge an appeal for legal protection or ultimately, to take the case to the European Court of Human Rights.

4. Furthermore, the Spanish legal system has extrajudicial mechanisms equally important and efficient against any behaviour amounting to ill-treatment inflicted by Law enforcement officers including the Ombudsman, which is appointed by the Spanish Parliament. Its role is to defend the rights provided for in Title I of the Constitution and in order to do so it can monitor the actions of the Administration. Subsequently it



reports to the Spanish Parliament. In this sense a strong effort has been made by Spain to eradicate in prisons any type of practices contrary to the fundamental rights. The ratification of the Optional Protocol to the UN Convention against Torture, and the designation of the Ombudsman as a national mechanism to prevent torture have been important steps and a strong indication of the Spanish involvement in defending those rights.

The Ombudsman excels as the institution providing extrajudicial guarantee par excellence along with the judicial guarantees that the Spanish legal system provides for the respect of the fundamental rights. The Ombudsman is therefore entitled to request the judicial control of the deprivation of liberty through the *habeas corpus* proceedings (section c) of Article 3 of the *Ley Orgánica 6/1984* of 24 May regulating the Habeas Corpus Proceedings. It also has the capacity to bring legal proceedings before the Constitutional Court on grounds of infringement of the Constitution or violation of any fundamental right. The Ombudsman also makes recommendations and drafts annual and monographic reports. These are seen as instruments helping to promote public authorities' action to remedy unlawful situations or practices and to respond also to complaints and allegations concerning government action. The detailed and profuse investigations carried out and the numerous recommendations made by this body help to encourage the prosecution of any conduct amounting to ill-treatment and reminds the need of remaining vigilant against it. This includes any behaviour that might exceptionally occur within Security Forces.

As previously mentioned, the Ombudsman has now become a national mechanism for the prevention of torture and an operational group has been established exclusively to visit prisons. Its aim is mainly preventive, that is, to detect structural and procedural problems that might lead to any type of ill-treatment. In this regard, and in order to improve and to better monitor and assess the situations in which people are deprived of their liberty, several actions have been taken: A "National Mechanism Unit for the Prevention of Torture" and an Advisory Committee were constituted at the beginning of 2010 and a close cooperation was established with professionals from diverse scientific fields. It is also expected that cooperation mechanisms between the Ombudsman and its autonomous regional counterparts, professionals associations and other important institutions will be established.

5. Finally, the request of an "independent investigation" not only calls into question the functioning of the Judiciary, but could also imply to empower another body to carry out those investigations. The creation of an independent organ to investigate the methods used 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 would be incompatible with the role of the judicial bodies (How would they coordinate? Would it be effective to have two investigations? Who would appoint that independent body? What would it be their legal status? etc.).



Moreover, it could have a negative effect on the efficiency of law enforcement officers.

Paragraph 30 (Conditions in the detention cells)

The CPT visited the Headquarters of the Guardia Civil at Calle Guzmán el Bueno (Madrid) and considered that the conditions in the detention cells should be improved. Therefore it called upon the Spanish authorities to proceed with the refurbishment of the cells. It also requested to be informed within three months of the actions taken.

The cells were immediately renovated after a project was approved. Refurbishment started on 13 June and ended on 18 July. The total amount of the works was 57,104.12 euros. The following works were made:

- Floor and damps repairs and other paint and brickwork
- Electricity system adaption
- Repairs to lightning and call bells inside the cells
- Ventilation improvements
- Toilet repair work of detention cells to comply with current regulations
- Removal of metal angles beside doors of detention cells

There have also been improvements in the CCTV surveillance system.



CONCLUSIONS

Recommendations of paragraph 15 (need for determined action to carry out a thorough and independent investigation of the methods used by the Guardia Civil in cases referred to in Article 384 bis of the CCP)

-The methods employed by the Guardia Civil officers are well regulated. The use of such methods shall abide by both the Rule of Law and the controls carried out by the disciplinary authorities. In case of criminal offence, the control is performed by the appropriate judicial body.

-The requirement for a thorough and independent investigation of such methods is unsuitable, since the Spanish legal system has administrative and judicial bodies that already carry out independent investigations of acts committed by police forces that might amount to torture.

- It is known that the complaints of torture lodged systematically by detainees held under incommunicado detention - due to their alleged involvement in a terrorist band -has always been a tactic used by these individuals which have been proven to be false and unsupported in most of the cases.

Recommendation of paragraph 30 (to inform of the action taken to improve the conditions in the detention cells in the Headquarters of the Guardia Civil at Calle Guzmán el Bueno, Madrid)

The appropriate action has been taken in order to improve the conditions in those cells.

Madrid, 30 March 2012

(Competent national authority to inform
CPT)

Juan Antonio Puigserver Martínez



PRESIDENT OF THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

**Spanish Government report in response
to all the comments, recommendations and information requests
formulated by the CPT**

I. INTRODUCTION

In pursuance of Article 10 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereafter CPT) presented to the Spanish Government the report relating to its periodical visit to Spain from 31 May to 13 June 2011. This was the 12th visit carried out by the Committee and the 6th periodical one.

As a result of the information gathered in the detention centres visited by the Committee, the CPT, in the above-mentioned report, formulates recommendations and suggestions to the Spanish Government, with a view at ensuring a full compliance with the standards established by the Committee.

In this perspective, the Spanish Government appreciates and takes note of the recommendations made, which enabled an improvement both at the legislative and practical level, with a view at ensuring a strict compliance with the provisions of the Convention.

Hereunder answer is given to the different recommendations and suggestions raised by the CPT, both through general comments and detailed answers to the observations and remarks contained in the report.

II. GENERAL REMARKS

The CPT focused its analysis on the main following areas:

- A. Detentions conditions ensured by the Spanish authorities, both under ordinary and incommunicado regime
- B. Location and conditions of Penitentiary Centres and Juvenile Detention Centres (both general and Catalonian ones)
- C. Conditions in Immigration Removal Centres and other situations relating to foreign people according to the legislation in force in Spain.

Particular attention was paid to the incommunicado regime, i.e. the system established in Article 55 of the Spanish Constitution and further regulated by the Code of Criminal Procedure, approved by Decree of 14 September 1882, as amended by *Ley Orgánica 1* (Act) 4/1988, of 25 May and *Ley Orgánica* (Act) 14/1983, of 12 December (thereafter, LECrim). According to Articles 520 bis and 527 LECrim, in relation with Article 384 bis, persons detained for their alleged participation in the commission of terrorism-related crimes shall be brought before the judge within 72 hours after their arrest. However, the aim of the investigation may justify the adoption within a 24-hour deadline by the Judicial Authority of a reasoned decision extending the duration of the detention up to 48 additional hours. In such cases, and without prejudice to the detainees' right to defense, within 24 hours after the arrest, the Judicial Authority may decide in a substantiated manner to place the accused under incommunicado detention. Furthermore, during detention, the Judge shall be entitled at any time to require information about the conditions of the detainee and verify them personally or by delegating this task to the Examining Magistrate of the judicial district where the detainee is being held.

1 TN: Under the current Spanish Constitution of 1978, a *Ley Orgánica* has an intermediate status between that of an ordinary law and of the Constitution itself. It must be passed by a majority of the Congress of Deputies. The Spanish Constitution specifies that some areas of law shall be regulated by this procedure, such as the Laws of Development of Fundamental Rights and Freedoms contained in the first section of Chapter Two of Title I of the Constitution.

The CPT delegation visited several penitentiary centres throughout Spain, paying particular attention to the units for inmates presenting special difficulties in adapting to prison life or subject to disciplinary measures.

Finally, the delegation also visited a Juvenile Detention Centre, assessed the working staff and examined its detention conditions, the availability of medical health-care, as well as the means of restraint used.

Following such visits, the CPT report made different recommendations and evaluations as regards situations considered as improvable or inadequate.

III. SPECIFIC REMARKS (FOLLOWING THE SECTIONS OF POINT II OF THE CPT REPORT)

Concerning the cooperation between the CPT and the Spanish authorities (section D of the report), the CPT states that in general, cooperation was outstanding, with a single exception, namely at the detention unit of the Intelligence Service of the Guardia Civil Directorate-General at c/ Guzmán el Bueno, Madrid. According to the Committee, the officials of the Guardia Civil repeatedly denied the delegation access to the detention unit for more than one hour. Once inside, the delegation encountered difficulties in carrying out the visit.

In this regard and after requiring information from the former Directorate-General for the Police and the Guardia Civil, it must be highlighted that **the statement according to which access to the above-mentioned facilities was denied is incorrect**. It is true that the delegation had to wait for 40 minutes before accessing the facilities. This was due to the state of the building pending full restoration, as well as to the fact that cells were empty in that moment, and the keys together with the custody registers were to be found in the Headquarter of the Intelligence Service in Barajas, 14 km away from the facilities in Guzmán El Bueno. This circumstance was reported to the CPT delegation.

Therefore, **the following must be specified:**

- In no way access was denied, it was rather delayed
- In the meanwhile, the Colonel in charge of Operations Sections of the General Staff of the Guardia Civil maintained an interview with the members of the delegation and informed them that the cells were empty and keys were not immediately available. Moreover, while waiting for the staff of the Intelligence Service to come, he led them to the door of the above-mentioned facilities
- In the end the delegation was able to access the facilities through a backdoor due to the accidental intervention of a cleaner who was washing the cells, since there was no detainee in them. This circumstance does not imply that the keys were to be found in the building. In no way did the officials of the Headquarters of Guzman El Bueno “lie” to the members of the delegation: the cleaner staff was washing up the cells since there was no detainee in them. Moreover, an immediate call was given to the Headquarter of the Intelligence Service to request the keys. This clearly shows that no intent to impede the access to the delegation was made. As a result, the delegation did enter the facilities, not immediately but after 40 minutes. During this time the Intelligence Service was informed, keys were picked up and brought by car to the headquarters. This took time, since it was a working day and traffic was intense and slow.

- The building at c/ Guzmán El Bueno of Madrid was pending full restoration, but works had to be suspended due to budgetary constraints. However, on June 13th, the day when the CPT concluded its visit to Spain, the Directorate-General for the Police and the Guardia Civil immediately started partial repairs. The report concerning these repairs has already been sent to the Committee in an official document dated March 13th, in reply to the request for immediate explanations – within 3 months – contained in paragraph 30 of its report.

- As a result of the above-mentioned incident, the cleaning protocol at the Directorate-General for the Police and the Guardia Civil was changed in order to ensure that, once the cells restored, cleaning activities, both ordinary and extraordinary, shall be only carried out at the request of the Intelligence Service; once date and time have been decided, a member of the Directorate-General for the Police and the Guardia Civil shall head to the facilities in order to allow the cleaning staff to enter the building and to personally verifying that such activities have been carried out properly.

Moreover, **the Maintenance Service of the aforesaid Directorate-General was given a set of keys of all cells**. In this way, in case of need, access can be promptly provided.

Furthermore, a few explanations are needed concerning the remarks made by the CPT in paragraph 6 of the report, in which the Committee points out that the Spanish authorities did “little or nothing” in response to some key recommendations made as a result of the previous visit in 2007 (in particular, it refers to the immediate availability of a lawyer from the moment of the deprivation of liberty of detainees by Security Forces, the means of restraint in penitentiary centres and the “persistent” overcrowding of the prison system). The Committee also considers that the lack of improvement undermines the principle of cooperation established in Article 3 of the European Convention on Human Rights.

We consider that it is excessive to state that the Government did little or nothing to comply with the CPT’s recommendations: this does not fit reality. Some recommendations could not be fulfilled due to a clear reason existing in all Rule of Law in which the principle of submission of Public Powers to the law is recognised: no action infringing legal provisions established by LECRIM on, for instance, incommunicado detention is allowed. In order to follow such recommendations, a legislative reform – like the one that is currently being brought about – would be needed. To this end, **on the past 2 March, the Spanish Council of Ministers approved the creation of two Institutional Committees responsible for drafting proposals of legislative decrees of LECRIM, as well as of the Ley Orgánica 6/1985, of 1 July, of the Judiciary, and of the Act 38/1988, of 28 December, on Judicial districts and organisation.**

Both Committees are composed by experts from different fields, such as judges, prosecutors, professors of Law, lawyers, solicitors and clerks of the court. Such Committees shall have a **5 month-deadline** to forward their proposals to the Ministry of Justice.

As regards the amendment of LECRIM, the main guidelines are i.a. the following:

1. Definition of the Public Prosecutor’s role within the criminal investigation
2. Delimitation of jurisdiction among judges
3. Inclusion of the case-law established by the Supreme Court, the Constitutional Court and the European Court for Human Rights in the field of fundamental rights

4. Right of convicted felons to the review of the judgement by a higher court (right to appeal in criminal matters)
5. Fixed deadline to reporting restrictions on criminal proceedings
6. Proper control of telephone tapping
7. Definition of the role of the criminal investigation police
8. Better definition of the use of the *actio popularis*
9. A more precise regulation of the private prosecution
10. Inclusion of the constitutional and international case-law on fundamental rights
11. Proper regulation of appeals
12. Revision of privilege of jurisdiction and the immunity against prosecution, along with judgements enforcement.

Furthermore, **the amendments of both the *Ley Orgánica* of the Judiciary and the Act on Judicial Districts and Organisation are aimed at:**

- a) Establishing a more rational and efficient organisation of the judicial system, in order to ensure the protection of civil, social and economic rights
- b) Following the principle of flexibility to organise the judicial system and adapting the territorial organisation to the current reality.

In conclusion, this is a clear example of how some CPT's recommendations – mostly not followed – are taken into account, although they cannot immediately be implemented, provided that – as the Committee knows – a compulsory, long and inclusive procedure is necessary to amend the legislation in force.

The same can be said in relation to means of restraint and overcrowding in penitentiary centres that are regularly being restored through step-by-step measures requiring an extended period for previous analysis and implementation.

Finally, **as regards La Modelo Prison in Barcelona**, and notwithstanding the details that will be provided in the response to the corresponding paragraph (117), **it must be pointed out that a set of measures aimed at reducing the levels of occupancy in this prison have been adopted**. Over the last years, in order to modernise, replace and build new penitentiary equipments, three new centres offering 3,000 additional places have been opened. Moreover, it has been planned to open as soon as possible two additional centres offering 2,000 more places. Policies promoting the enforcement of final judgements on parole, conditional release or through alternative measures excluding prison are also maintained.

In short, this set of short, medium and long term measures will allow the reduction of overcrowding in La Modelo Prison in Barcelona, in which the population keeps now stable with between 1,700 and 1,800 inmates.

INCOMMUNICADO REGIME

Paragraph 11 (Need for ensuring legal safeguards concerning incommunicado detention)

The CPT highlights the necessity to comply with legal safeguards for persons held in incommunicado detention.

In particular, the CPT details such safeguards: the prohibition of incommunicado detention for minors (under 18); 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 a 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; the adoption of a code of conduct on questioning; and the full video and audio recording of such interrogation.

Notwithstanding the response to such recommendations that can be found in the different parts of the report, it is important to refer to the recent creation in Spain of the so-called **National Mechanism for the Prevention of Torture** (hereafter, MNPT). It represents an additional safeguard ensuring the respect of international standards as regards the prevention of torture and ill-treatment.

As a result of the amendment of the *Ley Orgánica* – Act 3/1981, of 6 April, regulating the Ombudsman, by the *Ley Orgánica* 1/2009, of 3 November, the Ombudsman shall act as MNPT pursuant to the Constitution, the present *Ley Orgánica*, and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This amendment allowed the creation of an Advisory Council, acting as body for technical and legal cooperation to facilitate the functioning of the aforesaid Mechanism.

As a result of this amendment, the Ombudsman adopts the same preventive approach followed by the Subcommittee for the Prevention of Torture of the United Nations. Therefore, the Ombudsman regularly visits detention centres without prior communication, draws and disseminates the annual report, and addresses recommendations to the competent authorities. It also makes proposals and remarks as regards the legislation in force, maintain direct contact with the Subcommittee for the Prevention of Torture of the United Nations, and finally it promotes dissemination and aware-raising activities relating to the mission of the MNPT.

In 2010, the MNPT duly carried out visits and in mid-2011 released its first annual report, available on its website. Its actions will be detailed in the response to paragraphs 42 to 45 of the CPT report.

b. Torture and other forms of ill-treatment.

Paragraphs 15 and 16 (Investigation of detention and questioning methods of the Guardia Civil. Investigation and follow-up of claims of ill-treatment by Security Forces)

Paragraph 15 – together with paragraph 30 – represented a priority point for the CPT. For this reason, the Spanish authorities were required to reply to both paragraphs within three months at the latest. **This reply was forwarded in writing on 13 March 2012. Please see the content of the reply, which refers both to paragraph 15 and 16.**

Notwithstanding the above, it must be reminded that Article 174 of the Criminal Code defines the crime of torture committed by a civil servant who, abusing his/her position, and with the aim at obtaining a confession or information, or at punishing certain behaviours, inflicts physical or psychological pain, causes cognitive capacity loss or damage, or in any other way “*attacks moral integrity*”. Such misdemeanour is punished with a prison sentence of between two and six years in case of serious offence and of between one and three years in the event of less serious offences.

Such Article, to be analysed together with Article 175, belongs to Title VII of the Criminal Code, “*On torture and other crimes against moral integrity*”. The Constitution recognises this right in Article 15 that widely bans degrading treatment and is connected to human dignity, referred to in Article 10 of the Constitution as fundamental pillar of political order and social peace.

When alleged ill-treatment is detected or a claim is filed against it, judicial or administrative actions – sometimes both - are always immediately taken. However, the administrative investigation shall be suspended until a judgement is issued.

During the judicial investigation, Courts order Criminal Police to carry out activities aimed at verifying the allegations. When acting as Judiciary Police, its members comply only with the orders and instructions of the Court, without having to report to their immediate superior. Furthermore, for greater security, **the usual proceeding foresees that, in response to an order of the Court, the investigation may be entrusted to experts different from the Judicial Police group to which the alleged perpetrator of ill-treatment belongs.**

If the investigation of alleged ill-treatment and torture does not result in a judicial procedure and is carried out in the administrative sphere, police forces have their own units specialized in investigating internal affairs and potential disciplinary responsibilities.

Alongside these units, and for greater security, there is an *ad hoc* administrative body, the *Inspección de Personal y Servicios de Seguridad*² reporting to the State Secretary for Security which is fully independent from police forces and has extensive powers and the necessary resources to investigate alleged misdemeanours (including through information published by the media or circulated by NGOs).

As a result of the above, **there is a clear tendency to action in cases of suspected torture or ill-treatment. In this regard, the legal system not only describes such behaviours as crimes, but it establishes instruments to prosecute and punish them, that are actually implemented whenever it is necessary.**

The Committee does not refer to any case of torture declared by a final judgement, although claims for alleged ill-treatment are usual among detainees for terrorism, including during the periods of hospital stay.

As regards the actions taken by Security Forces, we would like to highlight that all detentions by the Intelligence Service of the Guardia Civil, especially created to fight terrorism, duly and strictly abide by the Spanish law and the dispositions established to enforce the Instruction 12/2007, of 14 September, on the conduct required from Law enforcement officials in order to guarantee the rights of persons detained or in custody.

* TN: Unit responsible for the inspection, control and assessment of the services, centres and units of both the Directorate-General of the Guardia Civil and the Directorate-General of the National Police, as well as for the fulfilment of the tasks entrusted to their members.

All detentions by the abovementioned service were conducted in the full respect for the rights of detainees during their statement. As a result, the time of the beginning and ending of the questioning was registered, along with the identity of both, the officers performing such questioning and those not actively participating, and the requests made by detainees or their lawyers. It was also ensured that detainees are informed of the possibility to have a break during the statement if they feel tired.

However, the above-mentioned Instruction and other applicable rules are included in the academic and training plans for members of the Guardia Civil, especially, for those serving within the Intelligence Service.

Concerning the procedure to be followed by Prosecutors / Courts in the event of alleged ill-treatment perpetrated by members of the Security Forces in charge of the custody of the detainee, it is worthy to remind that only a Court may authorise, *ex officio* or at the request of the interested party, the procedure established for facts amounting to possible crimes. Such order shall be issued either during the investigation (Article 303 of LECRIM), or during the oral exposition of the arguments within the trial (Article 777 of LECRIM), as well as at the moment when a claim for alleged ill-treatment against detainees by members of the Security Forces is filed (Articles 174 and following of the Criminal Code – *Ley Orgánica* 10/1995, of 23 November).

The procedure includes the investigation of the facts, and the examination of the victim, both by the Judge and the medical staff (Articles 335 and 344 and following of LECRIM; particularly, Article 352, according to which “the previous Articles can be applied when a detainee enters a prison, hospital or any other building and is examined by a doctor belonging to such centres”), as well as the identity of those having participated in the alleged crime.

Measures that may be adopted by Courts include the statement of the claimants, the visual inspection (Articles 326 and following of LECRIM), as well as the statement of the accused, witnesses, etc.

Article 299 of LECRIM describes the preliminary investigation as “*the set of measures aimed at preparing the trial, as well as verifying and providing evidence of the commission of the crime, together with any element that may modify the description of the crime and the guilt of the offenders. Finally, it aims at bringing the offenders before Justice and ensuring that they take on the pecuniary responsibility derived from the crime*”.

As a consequence, the preliminary investigation presents a documentary and preventive approach. In fact, during the proceeding, measures are taken in order to bring the offenders before Justice and to ensure that they take on the pecuniary responsibility derived from the crime.

However, *contrario sensu*, the preliminary investigation can also avoid unnecessary trials, when the investigated act does not amount to a crime or when its commission has not been proved. Moreover, it may allow the opening of new proceedings, as it is the case when a claim for alleged ill-treatment is filed. As pointed out in the answer to the CPT of last March, such claims compulsorily open a new investigation by the competent judicial body within the territory (i.e. a different court from the one which is competent in case of terrorist crimes).

As a result, there are no items of evidence to consider that Courts disdain or scarcely resort to the aforementioned investigating tools in cases serious offences such as torture or ill-treatment. As stated before, courts always decide on the basis of properly reasoned orders and following the principle of independence; furthermore, the result of the investigation shall be recorded in written or any other technical means allowing the recording of such findings both within the trial and the preliminary investigation.

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

Paragraph 17 (Non-application of incommunicado detention to minors)

The CPT considers that the positive development not to apply incommunicado detention to minors should be made permanent through amending the relevant primary legislation.

The CPT praises the criterion followed by Circular 1/2007 of the Public Prosecutor's Office about the interpretation criteria after the amendment of the Criminal Legislation on Minors in 2006 and supports that the measures contained in such circular shall be made permanent through amending the relevant primary legislation.

At present, in Spain the incommunicado detention of minors (under 18) is legal. In fact, the legislation in force does not exclude minors allegedly involved in terrorist crimes from the application of the incommunicado detention (mainly in cases of “*kale borroka*” established under Article 577 of the Criminal Code).

In the Code of Criminal Procedure, no reference is made to the possibility of applying the incommunicado detention to minors; however, the *Ley Orgánica 5/2000*, of 12 January - Law on the Criminal Responsibility of Minors, specifically refers to this question in Article 17.4, establishing what follows:

“The detention of minors by police officers shall not exceed the duration strictly needed to carry out the activities aimed at determining what occurred. In any event, within 24 hours, minors shall be either released or brought before the Public Prosecutor. If needed, the provisions of Article 520 bis of LECRIM shall be applied and the responsibility for issuing the orders regulated under this Article shall be transferred to Juvenile Courts. [...]”.

However, **the legislation does specifically regulate the rights of minors held under incommunicado detention**, that imply more procedural safeguards than in the case of adults.

Article 22 of the *Ley Orgánica 5/2000*, of 12 January, recognises such rights that shall be applied on a preferential basis instead of the general provisions established in LECRIM. The latter is considered as subsidiary rule, as stated in the First Final Provision of the former. Those rights are the following:

1. The right to remain silent, not to answer when questioned or state that he/she will make a statement only in front of the Judge
2. The right to decline to make a statement against him/herself and the right not to plead guilty.
3. The right to be represented by a court-appointed lawyer during police and judicial proceedings for any statement or identification parades
4. The right to be assisted by an interpreter free of charge when the detainee is a foreigner who does not speak or understand Spanish
5. The right to be examined by a forensic doctor, or legally recognised substitute, or, failing this, by a doctor from the institution where the detainee is held or any other doctor from the State Administration or other public institutions.

Moreover, **in practice this kind of detention has a residual character**. This was highlighted by the Public Prosecutor's Office in the aforementioned Circular urging Public Prosecutors to resort only in exceptional cases to the incommunicado detention. The Circular literally states:

“Should their incommunicado detention be ordered, minors arrested for terrorist crimes according to Article 17.4 of the Law on the Criminal Responsibility of Minors and Article 520 bis of LECrim shall not meet privately with their lawyer, neither before nor after their statement. Notwithstanding the above, Public Prosecutors shall oppose to any request of incommunicado detention for a minor – especially for minors under 16 – except when such measure is strictly necessary to ensure the success of the investigation. In any event, even before the incommunicado detention is ordered, the holders of parental rights, guardians or persons acting as de facto guardians shall be authorised to assist the minor during the incommunicado detention. Such authorisation may be rejected within the same judicial order establishing the incommunicado detention where there are substantial grounds therefor, and investigation of the alleged crimes requires so. However, in this case, minors placed under incommunicado detention shall be assisted by professionals of the Technical Staff and the Public Prosecutor”.

This Article foresees a clearly restrictive implementation of incommunicado detention. However, it does not exclude its use in concrete cases, as established in the following paragraphs:

“It should be reminded that minors held in incommunicado detention shall be entitled of all specific rights enjoyed by any other minors having been arrested. Apart from the prohibition of meeting privately with their lawyers, such rights shall be only subject to the following limitations: the exclusion of the right to have a counsel of their choice, implying that a lawyer shall be appointed by the Court, as well as the prohibition to inform their relatives or any other person of their arrest and place of custody, although the obligation to inform the holders of parental rights, guardians or persons acting as de facto guardians of the minor”.

As outlined, the content of the Circular does not unconditionally suggest legislative amendments aimed at abolishing the application of incommunicado detention to minors. However, it recommends its use in exceptional cases, when such measure is totally justified and taken in the respect of all safeguards, without thereby hindering the investigation, which is particular complex and important in cases of terrorist crimes.

The CPT considers that an adaptation of paragraph 9 of Rule V of the Instruction of the State Security Secretariat 12/2007, of 14 September, on the conduct required from Security Forces is needed, in order to ensure the rights of detainees or persons placed under police custody.

In this respect, it must be highlighted that, as an Instruction, **it must be in line with higher legal provisions such as LECRIM and the Ley Orgánica 5/2000, of 12 January**.

Notwithstanding the above, the mentioned Instruction 12/2007 establishes that Security Forces are obliged to “*previously inform the Public Prosecutors for Minors of the Audiencia Nacional*³ *about the request, the incommunicado detention, as well as the extension of the detention of the minor*”.

Moreover, Paragraph 4.9.2 of the Instruction 11/2007, of 12 September, of the State Security Secretariat, regulating the “*Police Action Protocol for Minors*”, establishes that the request for “*an extension of the duration of the detention and the application of the incommunicado regime to minors having been arrested as members of armed groups or linked to terrorists or defaulters shall be forwarded by the Juvenile Section of the Public Prosecutor’s Office of the Audiencia Nacional to the competent Juvenile Court*”.

3 TN: The *Audiencia Nacional* is the Spanish National Criminal Court that has nation-wide jurisdiction. It is an appeal and 1st instance Court for those matters established by the organic law of the judiciary and it specifically tries terrorism crimes.

As a result, it is clear that **the Public Prosecutor – in this case, of the Audiencia Nacional – protects the minors’ rights in relation to the actions taken by Security Forces when applying an incommunicado detention to them.**

Once presented the state of the art of the legislation in force, that underlines the lawfulness and exceptional nature of incommunicado detention for minors, it is worth to remind the content of paragraph 97 of the Human Rights Plan of the Spanish Government: “*Appropriate legislative amendments shall be carried out to clearly abolish the application of such measure to minors, regardless of the crime allegedly committed*”.

Furthermore, the Ministry of Justice, during his/her hearing before the Justice Commission of the Deputy Chamber, has already announced his/her intention to take up again the amendment of LECRIM, with a view at fulfilling the international commitments Spain has subscribed and ensuring the full respect for the fundamental procedural safeguards. Such reform, among other things, clearly foresaw the amendment of the criminal law for minors with a view at clearly abolishing the application of such measure to minors. As a result, the Institutional Commission was created in order to draw a consolidated text proposal for LECRIM – to which reference was made earlier in this report.

Paragraph 18 (Application of 3 specific safeguards vis-à-vis persons held in incommunicado detention)

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

Incommunicado detention and its regulation in Spain are one of the issues on which the CPT has been making recommendations all along its periodical visits.

Safeguards referred to by the CPT are aimed at preventing officials’ illegal actions and guaranteeing detainees’ rights. However, in no way do they imply the existence of any kind of suspicion of torture or ill-treatment. A recording system in all cells where detainees are held in the form of video or digital devices is considered necessary in order to record the situation of persons arrested held incommunicado.

As regards these safeguards two aspects need to be clarified:

- **First of all, these safeguards have legislative support:** Articles 10.2 and 96.1 of the Spanish Constitution; Articles 506, 520 bis and 527 of LECRIM; Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms; Article 17 and Article 10.1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Rules 31 and 32 of the **Standard Minimum Rules for the Treatment of Prisoners** (adopted by Resolutions of 1957 and 1977 of the Economic and Social Committee) and Article 2 of the Declaration against Torture of 1975, as well as Article 5 of the **Code of Conduct for Law enforcement officials** of 1979.

- **Secondly, these safeguards are not binding and therefore judges cannot be obliged to enforce them,** not even as a result of an order by the Governing Body of the Judiciary. The latter cannot address general or specific instructions to Courts concerning the application or interpretation of the Law when acting as judicial authority. That is what is specifically provided for in Article 12.1 and 12.3 of the *Ley Orgánica* of the Judiciary, establishing the independence of Courts when acting as judicial authority both from other judicial bodies and their Governing Body.

As a result, the Governing Body of the Judiciary cannot establish on a case-by-case basis the rules that are to be applied, nor can it correct the interpretation criteria followed in their decisions by Courts when acting as judicial body; otherwise, the above-mentioned Article 12 would be infringed.

a) The incommunicado detention represents an exceptional modality of preventive arrest if compared with the ordinary detention regulation:

- detainees' lawyers shall be court-appointed
- detainees shall not enjoy the right to inform their relatives or any other person of their arrest and place of custody
- they shall not be entitled to meet privately with their court-appointed lawyers after their participation in whatever act that might have been conducted
- the maximum duration of the incommunicado detention (72 hours) may be extended by Courts.

b) Article 520 bis of LECRIM establishes the existence of a judicial control. As a result, after a person has been arrested, “*the Court may be requested to authorise his/her incommunicado detention. The judge shall take a reasoned decision within 24 hours. After filing the request, the detainee shall be placed under incommunicado detention until the judge has taken its decision, without prejudice to his/her right to defence and of the content of Articles 520 and 527*

The aforementioned restrictions are due to the need to avoid that the detainees' possibility of flee increase and pieces of evidence get damaged, lost or hidden. Such measure relies on the suspicion that there is a conspiracy between detainees. This has been established under Article 509.1 of LECRIM (established to “*avoid that persons allegedly involved in the crimes investigated can escape Justice, attack victim's rights or interests, hide, modify or destroy evidence relating to the commission of the offence, or reoffend*”) and has been supported by the Constitutional Court in several rulings (STC 127/2000 of 16 May, STC 7/2004 of 9 February), stressing the following:

- Decisions must be duly reasoned (as farther indicated in other paragraphs of this report)
- Balancing of interests involved
- Proportionality of the measure
- Specific link between the interested person and the alleged crimes
- Existence of a legitimate end supported by the Constitution.

1. The possibility to inform a person of their choice of the arrest and place of custody represents an obligation for all members of Security Forces required by the Spanish criminal legislation, as well as a right for all detainee, according to Article 520.2.d) of LECRIM and Instruction 12/2007 of the State Security Secretariat, which states:

“The right of detainees to inform a person of their choice (as well as the consular office of their country, in case of foreigner detainees) of the arrest and place of custody shall be immediately ensured”.

Moreover, police officers shall be obliged to keep record of the communication – with persons or relatives of the detainees – in a call book that shall be available in all police premises, keeping record of it.

Notwithstanding the above, exceptional restrictions to this right shall be allowed by the Law in the event of incommunicado detention of persons involved in terrorist activities (Article 527.b) of LECRIM). Therefore, such restriction is not a mere consequence of the detention, but it is due to the placement under incommunicado detention.

In Spain, incommunicado detention is applied to detainees as a preventive measure – Article 520 bis along with Article 384 bis of LECRIM – authorised by the judicial authority and under its supervision. Its aim is not the detainees’ isolation, but to prevent potential reporting or liaison agents from sending or receiving orders that might hinder the investigation. Therefore, **in the case of highly organised armed or terrorist groups, the disqualification from the right of detainees to inform a person of their choice of the arrest and place of custody aims at delaying the dissemination of orders and advices that might facilitate the flee of other members of the group or the destruction of pieces of evidence.**

The prompt communication of detainees with a person of their choice to inform that they are held in police custody represents one of the rights recognised under Article 520. Its primary aim is to allow detainees to challenge their detention under *habeas corpus*, according to the provisions of the *Ley Orgánica 6/1984*, of 24 May. Therefore, it is a fundamental safeguard to prevent ill-treatment.

Notwithstanding the above, this restriction to the afore-mentioned right is counterbalanced by the existence of a set of safeguards where judicial review is ensured. This system of guarantees is **twofold**:

a- On the one hand, only Courts can authorise incommunicado detention through a reasoned order issued within the first 24 hours.

b- On the other hand, a permanent and direct control over the detainees’ situation and the prison’s conditions is carried out by the judicial authority. To this end, Courts are immediately informed of the detention, place of custody and police officers involved. Furthermore, Courts have all appropriate means to perform this task and - if needed – they are supported by medical staff. Finally, judicial authorities are entitled to adopt all appropriate measures, such as, for example, the possibility to deny the incommunicado detention or to order that detainees be brought immediately before the Court.

As a result, incommunicado detention in Spain is applied with all safeguards. This has been recognised both by ordinary courts and the Constitutional Court, that stress the compliance of our system with the standards set out in the international agreements signed by Spain, due to the existence of strict safeguards established by the Spanish Law. Ruling STC 196/1987 of the Constitutional Court is a good example thereof. Its Legal Basis VII states that for incommunicado detention to be allowed and deemed in line with the Constitution, “*it might be essential to ensure*– considering both the particular nature and severity of some kind of

offences and the personal and objective circumstances of the case - *that the investigation needs to be carried out in secret, in order to prevent third persons from having access to the investigation and thus facilitating perpetrators or persons involved escape Justice or pieces of evidence get destroyed or concealed*'. The same idea is reaffirmed in the Legal Basis VI of Ruling of the Constitutional Court 7/2004, of 9 February.

2. Concerning the recommendation that detainees be examined by a second doctor of their choice, it must be reminded that the Spanish legal system establishes a medical examination for all detainees, not only for persons under incommunicado detention. Doctors are professionals of the medical field with long experience in investigating the causes of death or injuries. In this sense, they receive the most appropriate training to detect any form of torture or ill-treatment.

This medical staff serves in the Justice Administration after being recruited through a public competition according to the principles of merit and ability and on the basis of their technical and legal knowledge. Neither Courts, nor governmental authorities can decide who shall be the doctor indicated to examine a concrete detainee. This task shall be performed by a medical professional previously appointed in the corresponding Court. When performing their tasks, doctors are fully subject to the medical ethical rules.

In practice, should the doctor detect any sign of external violence during the examination, he/she shall describe it in the injuries report to be forwarded to the Duty Court. Afterwards, detainees shall be examined by a doctor within the duty Court and a new report shall be drawn.

Furthermore, the already mentioned Instruction 12/2007 of the State Security Secretariat states what follows in relation to all detainees – included those placed under incommunicado detention:

“Should detainees present injuries as a result – or not – of the detention, they shall be immediately transferred to a health centre to be examined”.

In any case, it must be reminded that **Ley Orgánica 15/2003, of 25 November, as amended by Ley Orgánica 10/1995, of 23 November, approving the Criminal Code, includes a new Article 510.10 that allows detainees in incommunicado detention to request a second medical examination by a court-appointed professional.**

In this sense, it is the judicial authority who decides, for each concrete case, if detainees need to be examined by two or more doctors.

Since this amendment, significant improvements have been achieved in Spain in order to ensure that detainees undergo a second medical examination. For example, at present **many of the 6 Courts responsible for investigating terrorism-related crimes already allow detainees to be examined by a doctor of their choice – if requested by detainees – together with a doctor serving in the Court, who visits detainees every 8 hours, and in case of need.**

Although the real application of these additional measures, adopted as a protocol issued by Central Investigating Court No. 5 on 12 December 2006, depends on the competent judicial authority, it is worth to underline that **up to now they have been applied to approximately 32,5% of detainees placed under incommunicado detention.**

The aforementioned protocol establishes four requirements to allow the doctor's intervention. First of all, detainees shall give their consent; secondly, detainees and doctors shall speak in Spanish; thirdly, questions shall be related to the detainees' health conditions or placement in incommunicado detention; and finally, all reports shall be confidential. Doctors shall elaborate a report; the detainees-appointed doctor shall draw another one. Both shall be forwarded to the Court that shall hear detainees' statements.

Therefore, we wish to remind the CPT that the Human Rights Plan of the Spanish Government includes, among other measures, the possibility to carry out actions in order to ensure that detainees placed in incommunicado detention are examined both by a prison doctor and a doctor from the Public Health System freely appointed not by detainees themselves but by the National Mechanism to Prevent Torture. This is an engagement renewed by the new Government as a result of the statement of the Ministry of Justice to resume the amendment of the Code of Criminal Procedure.

Moreover, the above-mentioned Plan includes the adoption, through Decree of the Ministry of Justice, of a Protocol that shall contain the minimum medical exams for detainees, as well as standardised reports to be filled in, in order to coordinate the assistance given to incommunicado detainees. The aim is to include this programme – which is currently being elaborated – into the management protocols of the Institutes of Forensic Medicine. Once elaborated, the objective is to implement it within the *Audiencia Nacional*, with a view at offering the same form, with the same content to all Forensic Institutes.

In this perspective, the Basque Institute of Forensic Medicine drew up a Protocol that directly refers to the CPT and summarises its main recommendations in the field of legal medicine. This is the Coordination Protocol for the assistance to persons placed in incommunicado detention, available on the Basque Government web site. (<http://www.justicia.net/biblioteca/instituto-vasco-de-medicina-legal?primerElem=31>)

The objectives of the aforementioned Protocol are the following:

1. complying with the minimum standards set out by the CPT;
2. ensuring that reports include all important elements: history of claims for ill-treatment and related symptoms; detailed medical examination and conclusions (if needed);
3. facilitating minimum standards concerning the extension and quality of forensic medical examinations and their corresponding reports;
4. moving towards the harmonization of the medical practice of documentation / know-how of professionals working in such institutions.

As main **novelties**, first of all, it is worth to highlight that the Protocol of the Basque Institute of Forensic Medicine represents a conduct rule for forensic doctors and include the following basic points:

- a) Identification: the identity of the judge supervising the detention and ordering the medical examination shall be included, together with place, date and time of beginning and conclusion of the medical exam, as well as the identity of detainees and doctors.
- b) Personal and family history: in this way, it is possible to detect risk factors, diseases and disorders that may affect both the physical health of detainees and the medical treatment to be followed.

c) Account of detention conditions: reference to the potential existence of physical or psychological ill-treatment is necessary. A description of procedures, means, diet and rest conditions is also needed.

d) Physical examination: in this part a reference to a general examination of detainees shall be made, including an examination of the cardiovascular, lung and digestive systems, among others; a specific forensic examination is also needed, including a description and interpretation of potential injuries, cause and relation with the statement of detainees. This examination shall be complemented by sketches indicating where injuries are located, as well as by photographs of such injuries.

e) Psychological examination: its aim is to detect disorders or diseases, adaptation and response of detainees to detention and to report any element that may affect their conditions of detention.

f) Medical recommendations: the aim is to inform Courts of all indications and requirements as regards detainees' physical and psychological health, as well as concerning the place and way to implement such recommendations and their impact on detainees.

Secondly, the Protocol underlines the recommendation according to which the presence of the Judicial Commission / Clerk of the Court shall be required, as established by the legislation in force. Moreover, after the examination and within the shortest time possible, a medical report shall be prepared and forwarded to the competent judicial authority in the most appropriate way and following the instructions given.

Thirdly, **reference is made to the place where the first examination shall be carried out, i.e. before detainees enter the police premises. Such examination shall take place within the Basque Institute of Forensic Medicine.** Should it be impossible to conduct further examinations during police custody within the aforementioned Institute, an *ad hoc* Judicial Commission that shall visit the police station shall carry them out. Once the termination of the detention has been decided – and always before detainees are transferred or released – police officers shall inform the judicial authority thereof so that Courts can order their medical examination.

Finally, **a joint participation of two duty forensic doctors during the examination of incomunicado detainees is also foreseen.**

3. Concerning the video surveillance of detainees while kept under incomunicado detention and during questionings, its use is being extended throughout Spain.

At present, State Security Forces duly comply with all judicial orders and decisions authorising video surveillance of incomunicado detainees. To this end, they were given all necessary means, such as an advanced video surveillance system for common areas and rooms where proceedings are carried out (statements, unsealing of seized items and other proceedings) within the Intelligence General Police Commissariat of Madrid, as well as video portable units to be used by the Guardia Civil. Moreover, the autonomous police corps of the Basque Country and Catalonia also have video cameras within their premises in order to prevent ill-treatment against detainees.

Furthermore, in all detention centres of the State Security Forces **video recording systems in the areas designed for isolation and custody of detainees have been installed, avoiding those places where the intimacy of inmates might be infringed.**

Up to now such devices have been installed in more than 60% of the detention areas; nevertheless, the recording of isolated detainees is ensured upon request of the corresponding Court.

As a result, it can be stated that the judicial practice is extending the resort to those measures already recommended in the Human Rights Plan of the Spanish Government, in its Measure 97, paragraphs b), c) and d):

“b) Necessary legislative and technical measures to implement recommendations from human rights bodies for the video or audiovisual recording of the whole duration of the detention of incommunicado detainees within police premises.

c) Appropriate measures to ensure that incommunicado detainees are examined not only by a forensic doctor, but also by a professional of the Public Health System freely appointed by the representative of the future National Mechanism for the Prevention of Torture (MNPT).

d) Moreover, in order to ensure additional safeguards for detainees, a forensic doctor shall examine them following the criteria included in a Protocol to be drawn up by the Ministry of Justice, establishing the minimum standard medical examinations to be carried out as well as standardised forms to be filled in”.

Paragraph 19 (Ordinary requests of incommunicado detention)

The CPT requires information concerning the repetitive and partly routine practice to authorise requests of incommunicado detention made by the Guardia Civil in the event of terrorism-related crimes.

The CPT's report points out that Courts do not duly examine the need to apply the incommunicado regime and that incommunicado detention orders usually refer to repetitive legal grounds.

Moreover, the CPT seems to require comments concerning the approach of Courts when investigating claims for alleged ill-treatment filed by detainees held under incommunicado detention.

On this point, it must be reminded – once again – that incommunicado detention is an exceptional measure in the Spanish legal system, that can only be applied restrictively and under specific circumstances. Furthermore, according to Article 520 bis of LECRIM, Courts are obliged to provide sufficient reasons for imposing an incommunicado detention.

The Constitutional Court - whose case-law is binding for all ordinary judicial bodies – established strict safeguards to avoid that detainees held in incommunicado detention suffer ill-treatment. The Court requires judges to be particularly cautious when stating reasons for their decisions ordering incommunicado detention.

Concerning the prevention of ill-treatment of detainees in incommunicado detention, the Constitutional Court has been extending and defining its case-law as regards the investigation of cases of ill-treatment (alleged by persons involved in serious terrorism-related crimes). Rulings 34/2008, of 25 February; 52/2008, of 14 April; 63/2008, of 26 May; 69/2008, of 23 June; 107/2008, of 22 September and 123/2008, of 20 October are good examples of this.

In its Ruling 52/2008, of 14 April, the Constitutional Court expressly refers to the investigation of alleged torture during the incommunicado detention of persons suspected of having committed terrorism-related crimes. This ruling stresses that “*the infringement of this prohibition [of torture and ill-treatment] is very serious*”; the Court also refers to “*the judicial*

activity that needs to be carried out to ensure that this prohibition is respected, since ill-treatment and torture are difficult to detect. The preservation of the human dignity, as key protection element of the aforementioned prohibition - is particularly linked to the activity conducted by judges”.

As a result, “*in these cases, the right to legal protection can only be ensured if allegations are exhaustively and effectively investigated*”. This implies the existence of “*a special obligation to resort to all reasonable investigative possibilities that may be useful to determine what occurred*”.

Concerning the judicial investigation of torture, the Constitutional Court established the following rules:

- It “*must be considered, i.a., the potential existence of few evidence in this kind of offences; therefore, investigators must be very cautious when carrying out investigation activities. Moreover, in the event that victims encounter difficulties in presenting evidence of the commission of the crime, investigators shall apply the principle of evidence as sufficient ground to open a judicial investigation*”.
- “*The fact that the accused are public officials shall be counterbalanced by the judicial firmness regarding any potential opposition or delay in presenting evidence, particularly during the activities aimed at producing evidence conducted outside the institution involved in the accusation*”.
- It is especially important to establish - for the purposes of the investigation – “*the presumption that potential injuries detectable on detainees after their detention that previously did not exist can be attributed to the persons in charge of their custody*”.
- Finally, “*it is worth to highlight that in order to be rational, the analysis of the judicial statement of the claimant - a particularly appropriate means to investigate alleged torture or degrading treatment – as well of the previous statements of claimants made before the medical staff, Police and the judicial body, needs to specify that the effects of the violence against the liberty and possibility of self-determination of victims do not end with physical violence and when detainees are brought before the judge; on the contrary, the coercive effects of violence may last – and usually last – beyond the perpetration of torture*”.

The aforementioned considerations are also contained in the **Order of the Constitutional Court 155/99, of 14 June (Legal Basis IV)**, where the guidelines of this Court in this field are clearly explained:

“IV – As second relief sought by the appellants, they refer to nullity of the Orders authorising the incommunicado detention on the ground of lack of sufficient reasons. This defect in the decision would be sufficient cause to infringe the right to personal freedom and to legal protection (Articles 17.3 and 24.1 of the Spanish Constitution), as well as to determine the nullity of the statements of the accused made while held incommunicado, since such statements would have been obtained in violation of his/her fundamental rights; moreover, this irregularity would also imply – as a consequence – the nullity of the statements made before the Investigating Magistrate as prosecution evidence. In fact, this last kind of evidence – derived from other evidence that were initially in line with the constitutional requirements – would have been invalidated by the evidence illegally gathered (grounds 2 and 3).

The appellants contend that orders authorising an incommunicado detention shall state sufficient reasons to adopt such measure, since they significantly aggravate the liberty deprivation associated to the detention. In order to be in line with the Constitution, these orders shall not only comply with the general obligation to include sufficient reasons for a judgement (according to Article 24.1 of the Spanish Constitution), but also with the more strict requirements established to restrict fundamental rights. In particular, a judgment would not be considered as sufficiently grounded if it only refers to the existence of sufficient reasons to authorise the detention, i.e. the alleged participation or relation of detainees with armed groups, with terrorists or defaulters (Article 520 bis in relation to Article 384 bis, both of LECRIM); in this case, a complementary reason justifying the need for a limitation of fundamental right would be necessary.

The need for sufficient grounds to be stated by Orders authorising an incommunicado detention is not directly related to the general right to legal protection, but it derives from the fact that such measure constitutes an exceptional restriction of the detainees' fundamental rights. However, it cannot be maintained that these orders would infringe the right to personal freedom and legal protection, since they do reflect the necessary weighting of rights and interests involved as well as the proportionality that needs to be actually present in any measure restricting fundamental rights.

a) *First of all, the case-law of this Court attests that incommunicado detention does restrict and limit fundamental rights. On the one hand, this case-law considers that "incommunicado detention is more than a degree of liberty deprivation due to its impact on the rights of the individuals"; therefore, the argument that "once detained, additional measures further restricting personal freedom are only a legal modification of a legitimate detention must be rejected, provided that personal freedom allows different forms of restriction according to the extent of such limitation" (Ruling of the Constitutional Court 199/1987, legal basis XI.o). On the other hand, the situation of detainees held in incommunicado detention represents a restriction of their right to legal representation established in Article 17.3 of the Spanish Constitution as a safeguard. In fact, this measure implies the impossibility of appointing a lawyer of their choice and speaking privately with him/her, as established in Article 527 in relation with Article 520 of LECRIM (Ruling of the Constitutional Court 196/1987, legal basis V).*

As a result, the conformity of this restriction of fundamental rights with the Constitution depends on the existence of a judicial decision containing "an effective weighting of all interests and rights involved, in relation to the right concerned, with an aim at fully complying with the need for proportionality which is inherent to the idea of Justice" (as example, Ruling of the Constitutional Court 123/1997, legal basis III). Therefore, it is required to evaluate the presence of a constitutionally protected objective, the conformity of the measure with the means chosen, as well as an exam of the need for incommunicado detention to be adopted (for instance, Rulings of the Constitutional Court 55/1996, 161/1997 and 61/1998).

In particular, incommunicado detention Orders shall detail the aim that justifies their adoption, i.e. to avoid the risk that "persons not involved in the investigation get to know the state of activities, preventing offenders or persons involved in the commission of crimes to be brought before Justice or even destroying or hiding evidence". Moreover, such Orders shall justify the need of the incommunicado detention to achieve the above-mentioned aim, provided that "the special nature or severity of the offence, as well as their personal or objective circumstances may require that the police and judicial investigation be kept secret". It must be also considered that incommunicado detention represents a restriction of constitutional rights and its justification shall only be the protection of those rights and interests established in Articles 10.1 and 104.1 of the Spanish Constitution, i.e. social peace and citizens' security. Both constitute a key element in the prosecution and punishment of offences (Ruling of the Constitutional Court 196/1987, legal basis VII o).

b) Secondly, as stated in the Rulings of both the Audiencia Nacional and the Supreme Court, Orders authorising the incommunicado regime of the appellants contain an evaluation of the proportionality of such measure. Incommunicado detention Orders contain, both directly and by reference – a technique accepted also in the event of a restriction of fundamental rights at the request of the Government (Ruling of the Constitutional Court 123/1997, legal basis V) - the description of the facts and data of the investigated crime. Moreover, they include a description of the detainees' conditions and their detention, as well as not only the grounds of their arrest, but also the reasons for the imposition of the incommunicado detention for their alleged participation in activities related to ETA terrorist group. And last, but not least, these Orders evaluate and detail the necessity of such measure for the purpose of the on-going investigation, in accordance with Article 520 bis 2) of LECRIM. As a consequence of the aforementioned, a weighting of the proportionality of the measure restricting fundamental rights shall have been carried out. Moreover, this evaluation shall have been included in the incommunicado detention Orders that shall contain a reference to the requests made by the Government demanding the imposition of the incommunicado detention (grounds 2nd and 3rd).

The abovementioned case-law shows the impact of incommunicado detention on the fundamental rights of detainees. As a result, the obligation to state sufficient reasons to adopt such a decision cannot be limited to a general compliance with the requirement derived from the right to legal protection. As for any other exceptional restriction of fundamental rights, judicial decisions shall contain an effective weighting of all interests and rights involved. As a consequence, the imposition of such measures shall be appropriate, consistent and proportionate, as well as aimed at fulfilling a constitutionally protected objective.

As a result, the need to detail the grounds of a judgement - as highlighted by the Constitutional Court - requires a level of requirements and discipline that cannot be achieved through stereotyped and generic formulas weighting the interests and rights involved as reason to authorise an incommunicado detention. It is worth to stress that the rules in force – interpreted in harmony with the constitutional case-law – require that the grounds of a judgment fully show a weighting of the fundamental rights involved, as well as of the need for adopting measures restricting liberty.

Finally, the MNPT itself, in its 2010 report, recognises that the incommunicado detention regime is justified since it prevents criminal groups – that may have a great capacity of action using relatives, friends, lawyers, etc. – from putting pressure on detainees so they obstruct the investigation or even coercing them if they decide to collaborate.

Paragraph 20 (Detainees brought physically before the competent judge prior to the taking of a decision on the extension of the period of custody beyond 72 hours)

The CPT recommends 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.

Article 17.2 of the Spanish Constitution establishes that “preventive arrest may last no longer than the time strictly necessary in order to carry out the investigations aimed at establishing the events; in any case the person arrested must be set free or handed over to the judicial authorities within a maximum period of 72 hours”.

According to LECrim, as regards police custody of members or persons related to armed groups or terrorists, the detention may be extended up to 48 additional hours, provided that the judge has made the appropriate request within the first 48 hours since the arrest and the Court has authorised such measure making a reasoned decision within the following 24 hours.

During detentions for the alleged commission of one of the crimes referred to in Article 384 bis of the Criminal Code, the Court may adopt a reasoned decision authorising the placement under incommunicado detention. As a result, during police custody, the arrest may last the time strictly necessary in order to conduct the investigations aimed at establishing the events; in any case up to a maximum duration of 120 hours (5 days).

Once detainees are handed over to the judicial authority, and they are transferred to a penitentiary centre – where all safeguards are ensured - the Court may adopt a reasoned decision authorising the extension of the incommunicado detention up to a maximum of 5 additional days.

Beyond that deadline, and once lifted the incommunicado regime, the Court may authorise a new period of incommunicado detention for a maximum of 3 days, taking into account the results of the investigation or reasoning if there are sufficient grounds therefor.

On this point it must be highlighted that, **in 2009 in practice, Judges have never authorised an incommunicado detention measure of more than 5 days.**

As a result, it can be stated that Spanish courts are implementing the remarks made by the different Committees of the United Nations and thus tend to reduce the maximum duration of incommunicado detention.

In short, the Law maintains the possibility to extend – in very exceptional cases – incommunicado detention once detainees are brought before the Judge, and by doing so it ensures a judicial control over this measure. However, **in practice Spanish courts are not currently authorising this extension; therefore, it can be affirmed that in practice no incommunicado detention of more than 5 days exists.**

Moreover, as stated in the answer to the report relating to the visit carried out in 2007, although Article 520 bis of LECrim allows the adoption of such measure “*inaudita parte*”, this does not imply that such decision shall not respect some minimum safeguards that ensure that detainees do actually enjoy their right to defence.

All precautionary measures shall be characterised by the compulsory judicial intervention, i.e. only competent criminal courts can adopt them following the procedure established by Law. In addition, the Constitutional Court has pointed out that the maximum extension of police custody (72 hours) set out in the Spanish Constitution has an absolute nature. However, this duration is meant to provide the police with the time “strictly needed” to investigate what occurred, and this last circumstance justifies the regulation provided for in Article 520 of LECrim.

If with the afore-mentioned recommendation the CPT intends to prevent potential ill-treatment, it must be highlighted that the Spanish legal system has procedural instruments for the Judge to contact detainees whether their incommunicado regimen have been agreed upon or not.

Thus, Article 520bis.3 of LECrim provides that “*during detention, the Judge shall be entitled to request information about the conditions of the detainee at any time and verify them personally or through the Examining Magistrate of the judicial district where the detainee is being held*”.

Moreover, judgement of 16 December 1987 of the Constitutional Court states that “*the Judge is entitled [...] to verify the legality and the conditions of detention in order to ensure the compliance with the constitutional rights of the detainee, not only those included in Article 24, but also any other constitutional right that may be involved in each particular case. As all the national territory falls under his/her jurisdiction, the Judge is allowed to personally verify the detainee’s conditions or [...] to delegate this task to the Examining Magistrate of the judicial district where the detainee is being held*

”.

In addition, the Spanish legal system recognises the right of all detainees to the “*habeas corpus*”. This legal mechanism, with a long tradition in the Anglo-Saxon law and applied in Spanish law in the past, has historically proved to be particularly suitable to protect personal freedom in case of potential arbitrariness from public authorities, and, as already mentioned, is implemented by the *Ley Orgánica 6/1984* of 24 May.

The *habeas corpus* aims to establish not only means to efficiently and promptly solve cases of unfounded detention but also to prevent these detentions from being carried out illegally. It allows the possibility of this process being started *ex officio* or upon request of those included in the scope of Article 3. As first measure, arising from the order to open the proceedings, this mechanism establishes that, in order to be heard, detainees may be brought to justice or the Judge may visit them.

Therefore, with the “*habeas corpus*” detainees are brought before the Court having the opportunity to make their point of view known on the conditions of the detention or on the reasons of them being detained. Based on that, the judge may grant approval or not for the detainees to be held.

This right is thus a legal guarantee with regard to the injunctions *inaudita parte*. One of these injunctions, mentioned on the CPT report, is provided for in Article 520bis of LECRIM.

Paragraph 21 (Private interview between detainees and their lawyers)

The CPT recommends the adoption of measures aimed to enable detainees placed under incommunicado regime to have access to a solicitor in private from the moment of their detention and after it if necessary. It also states the right of the detainees’ solicitor to be present during any questioning by Law enforcement officials.

The appointment of a duty solicitor, and not a counsel of their own choice, is aimed at finding the appropriate balance between the prevention of potential terrorist attacks and the defence of the detainees.

Duty solicitors are required to have a particular professional qualification and are appointed by a professional body. They **are organised into solicitors associations which are fully independent from public authorities, which, in turn, appoint the solicitor assisting the detainees**. The State only takes part subsequently and just to cover the cost of this service. As regards their particular qualification, **a minimum of 10 year’s professional experience and demonstrated experience in criminal matters** is required.

As stated by the Constitutional Court, it has to be taken into account that **legal assistance has different functions**. **During the trial** confidence inspired by duty solicitors in the detainees is particularly important, thus being essential for detainees to have a solicitor of their choice. **During detention**, the presence of duty solicitors aims at ensuring that the constitutional rights of detainees are complied with, they are not coerced, that no treatment violating their personal dignity or freedom to speak is inflicted, and that they are well advised regarding their behaviour during interviews including the right to remain silent.

It has also to be considered that statements made by detainees to the police have no value as evidence and that “*once the short incommunicado period – as required by law - has expired, detainees have the right to choose a solicitor of their own choice*”. That is why the above-mentioned Court has stated that duty solicitor’s legal assistance ensures the rights of detainees in the same way as a solicitor of their own choice.

The European Court of Human Rights has come to the same conclusion distinguishing between pre-trial proceedings legal assistance and trial legal assistance.

The Court has noted that during the pre-trial proceedings:

“[...] although Article 6 will normally require that the accused be allowed to benefit from the assistance of a lawyer already at the initial stages of police interrogation, this right, which is not explicitly set out in the Convention, may be subject to restriction for good cause. The question, in each case, is whether the restriction, in the light of the entirety of the proceedings, has deprived the accused of a fair hearing”.

Thus, the Strasbourg Court has indicated that the risk of suspect persons not yet arrested and participating in the crime being warned is good cause, among others, to restrict the right of lawyer assistance. It is known that terrorist organizations, particularly, criminal organizations have their own legal assistance as well as a support network by which detainees are threatened and orders are sent. That is why to ensure that detainees’ statements are free and not coerced, in many cases detainees will not be allowed to benefit from the assistance of terrorist organizations’ lawyers.

Moreover, it is not unusual that persons closely linked to the band and subsequently sentenced for belonging to a terrorist organization are appointed as lawyers by those detained by crimes related with armed groups.

In fact, in the same Ruling of 16 October 2001 (*Brennan vs. United Kingdom*), this Court estimated that a 24 hour period of refusal of access to legal assistance did not constitute a breach to the Convention. Only after the first 48 hours of detention, did the detainee have the right to access a lawyer; it is in this moment when the detainee was interviewed by the Police.

Decision of the Commission on Human Rights of 21 May of 1997 states that although Article 6.3.c) of Section I of the European Convention in Human Rights recognises the right of the detainee to “*defend himself in person or through legal assistance*”, each Contracting State is entitled to choose the means within their legal system to ensure legal assistance. The Court will be required to assess whether the means is in line with fair trial requirements (Judgement *Quaranta*, Series A, No 205, p. 16, para 30). It must be reminded that the Convention intends to “*guarantee not the rights that are theoretical or illusory but rights that are practical and effective*”. Moreover, the appointment of a lawyer is not a guarantee by itself of an effective assistance to the detainees (*Artico v. Italy Judgement*).

The Commission notes that Article 6 of the Convention establishes that detainees have the right to legal assistance when the police questioning starts although this right might be reasonably subject to restrictions. The question, in each case, is to know whether the restriction, in the light of the entirety of the proceedings, deprives the accused of a fair hearing (European Court of Human Rights, *John Murray v. United Kingdom Judgement*, 8 February 1996 (Collection 1996, para. 63).

Finally, it must be reminded that the Spanish legal system (Articles 520 and 527 of LECRIM) states that detainees must be informed of their rights to:

- remain silent and decide whether he/she wants to give a statement or not
- not answering any or some of the questions being asked
- declare his/her intention to give evidence only before the judge

Detainees are also informed of their right to decline to make a statement against themselves and not to plead guilty. That is why the non-intervention of the duty solicitor during the detainees' testimony is not detrimental to their right to defend themselves.

Finally, regarding the restriction on the possibility for the duty officer to have a private interview with detainees, this restriction is based on the widely organised nature of terrorist groups. This may imply threatens and coercion by the organization members to duty officers in order to oblige them to work as messengers. Should the messages be spread, the antiterrorism operation may fail. **Therefore the Spanish Law responds to a dual need: avoiding organization's member to be informed of the state of the investigation, and protecting duty officers from the terrorist group.**

Paragraph 22 (Forensic medical reports)

The CPT recommends that written forensic medical reports be produced by the doctor and delivered to the judge and that this recommendation be implemented without further delay. It also recommends that there should always be a conclusion by the doctor as to the consistency of the findings with any allegations made.

Given the relation of this question with one of the recommendations made by the CPT in paragraph 18 of its report and in order to answer the question raised in the above paragraph, the CPT is referred to paragraph 18 of the present report.

Paragraph 23 (Visits to detainees from a doctor of their own choosing)

The CPT reiterates the need for persons held incommunicado to enjoy the possibility to receive daily visits from their own doctor, accompanied by a forensic doctor appointed by the Court. This measure, already applied by certain examining judges of the Audiencia Nacional, must be introduced for all persons under incommunicado detention.

In this connection, reference should be made to paragraph 18 of the present report.

Paragraph 24 (Methods contravening Instructions 12/2007 of the State Secretariat for Security of 14 September on the conduct required from Law enforcement officials in order to guarantee the rights of detainees or persons under police custody)

The CPT's delegation contends that from the evidence given by persons arrested during the January, March and April 2011 operations by the Guardia Civil with whom the delegation met it is inferred that the provisions of Instructions 12/2007 of the State Secretariat for Security were not being respected by Guardia Civil Law enforcement officials. The CPT maintains that the purpose of blindfolding or hooding apprehended persons while being moved is most often to prevent such persons from being able to identify Law enforcement officials who inflict ill-treatment upon them.

It must be noted that in January, March and April 2011, the Guardia Civil arrested and accused 14 individuals (7 in January, 4 in March and 3 in April) of belonging to and cooperate with ETA terrorist group; these are:

January 2011:

1. On 11 January, I.U.V. was arrested. This individual was arrested and remained in the custody of the Guardia Civil until he/she was taken to Central Investigating Court No 3 of the *Audiencia Nacional* on 14 January. The individual was held incommunicado during these days based on an Order by the Central Investigating Court No 3 that described the measure as necessary, appropriate and proportionate. He /she was examined by the forensic expert 6 times and no significant incidents were recorded. Medical examination was carried out by the forensic expert from San Sebastian (Guipúzcoa) on 11 January at 10.20 am and subsequently by the forensic expert of the *Audiencia Nacional* on 11 January at 08.25 pm 12 January at 10.35am and at 08.22 pm. On 13 January at 10.25 am and at 08.45 pm. To his end, police measures No1/2011 were taken and Central Investigating Court No 3 of the *Audiencia Nacional*, that had ordered preparatory proceedings No 256/2010, was informed in writing.

On 18 January, Guardia Civil officers arrested other 6 individuals in Navarra (2 in Pamplona, 1 in Villaba, 1 in Barañain, 1 in Echarri Aranaz and 1 in Vidaurreta). All of them allegedly linked to the terrorist band EKIN that had been banned.

2. J.Z.C, arrested in Pamplona, (Navarra). He/she was detained by Guardia Civil officers and remained under their custody under judicial control of Central Investigating Court No 3 of the *Audiencia Nacional* until brought in front of the judge. On 22 January his/her imprisonment was decided. He/she was held incommunicado, based on a judicial order of Central Investigating Court No 3 that described the measure as proportionate, necessary and appropriate. During his/her detention he/she was examined by the forensic expert twice a day, that is, a total of 8 times and no incidences were observed. He/she was examined, in particular, on 18 January at 09:24 and at 08:00 pm, on 19 January at 10:35 am and at 07:35 pm; on 20 January at 10:26 am and at 08:09 pm, and on 21 January at 09:50 am and at 07:00 pm. To his end, police measures No 102/2011 were taken and Central Investigating Court No 3 of the *Audiencia Nacional*, that had ordered preparatory proceedings No285/10, was informed in writing.

3. J.B.M was arrested in Pamplona. He/she was detained by Guardia Civil officers and remained under their custody under judicial control of Central Investigating Court No 3 of the *Audiencia Nacional* until brought in front of the judge. On 21 January his/her imprisonment was decided. He/she was held incommunicado, based on a judicial order of Central Investigating Court No 3 that described the measure as proportionate, necessary and appropriate. During his/her detention he/she was examined 6 times by the forensic expert and no incidences were observed. He/she was examined, in particular, on 18 January at 07:30 am and at 08:00 pm, on 19 January at 10:35am and at 07:35 pm; and on 20 January at 10:26 am and at 08:09 pm. To his end, police measures No102/2011 were taken and Central Investigating Court No 3 of the *Audiencia Nacional*, that had ordered preparatory proceedings No285/10, was informed in writing.

4. I.M.I was arrested in Villaba (Navarra) He/she was detained by Guardia Civil officers and remained under their custody under judicial control of Central Investigating Court No 3 of the *Audiencia Nacional* until brought in front of the judge. On 21 January his/her imprisonment was decided. He/she was held incommunicado, based on a judicial order of Central Investigating Court No 3 that described the measure as proportionate, necessary and appropriate. During his/her detention he/she was examined 6 times (twice a day) by the forensic expert and no incidences were observed. He/she was examined, in particular, on 18 January at 11:59 am and at 08:00 pm, on 19 January at 10:35 am and at 07:35 pm; and on 20

January at 10:26 am and at 08:09 pm. To his end, police measures No 102/2011 were taken and Central Investigating Court No 3 of the *Audiencia Nacional*, that had ordered preparatory proceedings No285/10, was informed in writing.

5. I.G.E was arrested in Barañain (Navarra). He/she was detained by Guardia Civil officers and remained under their custody under judicial control of Central Investigating Court No 3 of the *Audiencia Nacional* until brought in front of the judge. On 22 January his/her imprisonment was decided. He/she was held incommunicado, based on a judicial order of Central Investigating Court No 3. The measure was deemed as proportionate, necessary and appropriate by this judge. During his/her detention he/she was examined 8 times by the forensic expert and no incidences were observed. He/she was examined, in particular, on 18 January at 07:45 am and at 08.00 pm, on 19 January at 10.35 am and at 07.35 pm, on 20 January at 10.26 am and at 08.09 pm and on 21 January at 09.50 am and 07:00 pm. To his end, police measures No 102/2011 were taken and Central Investigating Court No 3 of the *Audiencia Nacional*, that had ordered preparatory proceedings No285/10, was informed in writing.

6. J.A.G. was arrested in Echarri Aranaz (Navarra). He/she was detained by Guardia Civil officers and remained under their custody under judicial control of Central Investigating Court No 3 of the *Audiencia Nacional* until brought in front of the judge. On 22 January his/her imprisonment was decided. He/she was held incommunicado, based on a judicial order of Central Investigating Court No 3. The measure was deemed as proportionate, necessary and appropriate by this judge. During his/her detention he/she was examined 8 times by the forensic expert and no incidences were observed. He/she was examined, in particular, on 18 January at 12.36 am and at 08.00 pm, on 19 January at 10.35 am and at 07.35 pm, on 20 January at 10.26 am and at 08.09 pm, and on 21 January at 09:50 am and 07.00 pm. To his end, police measures No 102/2011 were taken and Central Investigating Court No 3 of the *Audiencia Nacional*, that had ordered preparatory proceedings No285/10, was informed in writing.

7. J.M.H. was arrested in Vidaurreta (Navarra). He/she was detained by Guardia Civil officers and remained under their custody under judicial control of Central Investigating Court No 3 of the *Audiencia Nacional* until brought in front of the judge. On 22 January his/her imprisonment was decided. He/she was held incommunicado, based on a judicial order of Central Investigating Court No 3 that described the measure as proportionate, necessary and appropriate. During his/her detention he/she was examined 8 times (twice a day) by the forensic expert of the *Audiencia Nacional* and no incidences were observed. He/she was examined, in particular, on 18 January at 08:04 am and at 08.00 am, on 19 January at 10.35 am and at 07.35 pm, on 20 January at 10.26 am and at 08.09 pm and on 21 January at 09.50 am and 07.00 pm. To his end, police measures No 102/2011 were taken and Central Investigating Court No 3 of the *Audiencia Nacional*, that had ordered preparatory proceedings No285/10, was informed in writing.

March 2011

On 1 March 2011 four more persons were arrested in Bilbao:

1. B.E.C. was arrested in Bilbao. He/she was detained by Guardia Civil officers and remained under their custody under judicial control of Central Investigating Court No 3 of the *Audiencia Nacional* until brought in front of the judge. On 5 March his/her imprisonment was decided. He/she was held incommunicado, based on a judicial order of Central Investigating Court No 3 that described the measure as proportionate, necessary and appropriate. During his/her detention he/she was examined 7 times by the forensic expert and no incidences were observed. He/she was examined, in particular, on 1 March at 21:30h, on 2 March at 10:10 and at 19:25h, on 3 March at 09:50 and at 19:05h, and on 4 March at 12:14h and 19:05. To his

end, police measures No G9481912111-11-000031 were taken and Central Investigating Court No 3 of the *Audiencia Nacional*, that had ordered preparatory proceedings No41/2011, was informed in writing on 5 March.

2. I.Z.R was arrested in Bilbao at 04:29 am on grounds of being an alleged member of a terrorist commando that carried out 14 attacks. He/she was detained by Guardia Civil officers and remained under their custody under judicial control of Central Investigating Court No 3 of the *Audiencia Nacional*. He/she was brought in front of the judge on 5 March and his/her imprisonment was decided. He/she was held incommunicado, based on a judicial order of Central Investigating Court No 3 that described the measure as proportionate, necessary and appropriate. During his/her detention he/she was examined 7 times by the forensic expert of the *Audiencia Nacional* and no incidences were observed. He/she was examined, in particular, on 1 March at 09.30 pm, on 2 March at 10.10 am and at 07.25 pm, on 3 March at 09.50 am and at 07.05 pm, and on 4 March at 12.14 am and 07.05 pm. To his end, police measures No G9481912111-11-000031 were taken and Central Investigating Court No 3 of the *Audiencia Nacional*, that had ordered preparatory proceedings No41/2011, was informed in writing.

3. L.L.D was arrested on grounds of being an alleged member of ETA terrorist band that carried out 14 attacks. He/she was detained by Guardia Civil officers and remained under their custody under judicial control of Central Investigating Court No 3 of the *Audiencia Nacional*. He/she was brought in front of the judge on 5 March and his/her imprisonment was decided. He/she was held incommunicado, based on a judicial order of Central Investigating Court No 3 that described the measure as proportionate, necessary and appropriate. During his/her detention he/she was examined 7 times by the forensic expert and no incidences were observed. He/she was examined, in particular, on 1 March at 09.30 pm, on 2 March at 10.10 am and at 07.25 pm, on 3 March at 09.50 am and at 07.05 pm, and on 4 March at 12.14 am and 07.05 pm. To his end, police measures No G9481912111-11-000031 were taken and Central Investigating Court No 3 of the *Audiencia Nacional*, that had ordered preparatory proceedings No 41/2011, was informed in writing.

4. D.P.A was arrested by Guardia Civil officers of Bizkaia, Bilbao, on grounds of being an alleged member of a terrorist commando that carried out 14 attacks. He/she remained under their custody under judicial control of Central Investigating Court No 3 of the *Audiencia Nacional*. He/she was brought in front of the judge on 4 March and his/her imprisonment was decided. He/she was held incommunicado, based on a judicial order of Central Investigating Court No 3 that described the measure as proportionate, necessary and appropriate. To his end, police measures No G9481912111-11-000031 were taken and Central Investigating Court No 3 of the *Audiencia Nacional*, that had ordered preparatory proceedings No41/2011, was informed in writing.

Regarding the arrest of this person, sources from the former Directorate-General for the Police and the Guardia Civil informed that when this person was being arrested, he/she had an extremely violent reaction, beating indiscriminately Law enforcement officials, threatening and insulting them. Therefore the use of the essential and necessary force by Law enforcement officials was required to control him/her.

This behaviour continued while he/she was entering law enforcement premises and registered was made. That is why when the detainee was handcuffed with cloth straps he/she was warned several times by the person responsible for the proceedings not to resist and stop turning his/her wrists since he/she faced the risk of self-harm. This circumstance was registered on the entry register by the Clerk of the Court who was present during the proceedings. At 09.30 pm he/she was examined by the forensic expert of the *Audiencia Nacional*.

On 2 March another medical examination was carried out at 10:10h and no incidences were recorded. Next day, on 3 March at 11.30h while still in the cells of the Guardia Civil Headquarters, he/she started shouting and banging himself/herself violently and repeatedly against the floor. It was then decided to resort to fixation to avoid him/her continuing inflicting injuries on him/herself. He/she was subsequently taken to Fundación Jiménez Díez Health Centre at Avenida Reyes Católicos No2, Madrid. After being examined and treated, he/she was taken again to the Headquarters of the Guardia Civil. On the same day, at 19:05, the forensic expert of the *Audiencia Nacional* examined him/her and no incidence was recorded.

On 4 March, at 9.50h, he/she tried again to self-harm inside his/her cell. The forensic expert of the *Audiencia Nacional*, that was at that moment at the Headquarters, verified the outburst of violence and diagnosed “*slight traumatic crane injury and agitation*”. He/She was then taken to hospital in an ambulance for psychiatric use and the injury report and hospital form – recorded in the proceedings - were submitted. Central Investigating Court No 3 of the *Audiencia Nacional* was informed and decided that the detainee should be taken before the Court as soon as his/her medical condition allowed it. On 4 March he/she brought to the Court and his/her immediate imprisonment was ordered.

April 2011

Finally, on 12 April 2011, two persons were arrested in Legorreta (Guipúzcoa) and another one in Vera de Bidasoa (Navarra).

1. I.E.D was arrested by Guardia Civil officers of Guipúzcoa on grounds of being an alleged member of a terrorist commando of ETA. He/she remained under their custody under judicial control of Central Investigating Court No 3 of the *Audiencia Nacional* until brought in front of the judge on 15 April who ordered his/her release. He/she was held incommunicado, based on a judicial order of Central Investigating Court No 3 that described the measure as proportionate, necessary and appropriate. During his/her detention he/she was examined 7 times by the forensic experts and no incidences were observed. First, he/she was examined by the forensic expert of the Examining Magistrate's Court of Vitoria (Álava/Araba) on 12 April at 11.10 am. Subsequently, the forensic expert of the *Audiencia Nacional* carried out the examination, in particular, on 12 April at 08.00 pm, on 13 March at 10.15 am and at 09.20 pm, on 14 April at 09.35 am and at 07.10 pm, and finally on 15 April at 10.00 am. To this end, police measures No 2011-101883-00000002 were taken and Central Investigating Court No 3 of the *Audiencia Nacional*, that had ordered preparatory proceedings No249/2010, was informed in writing.

2. J.A.E.D was arrested by Guardia Civil officers of Legorreta, Guipuzko, on grounds of being an alleged member of a terrorist commando of ETA. He/she remained under their custody under judicial control of Central Investigating Court No 3 of the *Audiencia Nacional* until brought in front of the *Audiencia Nacional*. On 16 April this Court decided his/her imprisonment on grounds of belonging to a terrorist organization, cooperation with this organization, and possession of weapons and explosives for terrorist purposes. He/she was held incommunicado, based on a judicial order of Central Investigating Court No 3 that described the measure as proportionate, necessary and appropriate. During his/her detention he/she was examined 7 times by forensic experts and no incidences were observed. First, he/she was examined by the forensic expert of the Examining Magistrate's Court of Vitoria (Álava/Araba) on 12 April at 07.50 pm. Subsequently, the forensic expert of the *Audiencia Nacional* carried out the examination, in particular, on 13 April at 10.15 am, and 09.20 pm, on 14 April at 09.35 am and at 07.45 pm, and on 15 April at 10.00 am and at 07.33 pm. To his end, police measures No 2011-101883-00000002 were taken and Central Investigating Court No 3 of the *Audiencia Nacional*, that had ordered preparatory proceedings No249/2010, was informed in writing.

3. L.E.S was arrested by Guardia Civil officers of Guipuzkoa in Vera de Bidasoa (Navarra) on grounds of being an alleged member of a terrorist commando of ETA. He/she remained under their custody under judicial control of Central Investigating Court No 3 of the *Audiencia Nacional* until brought in front of the *Audiencia Nacional*. On 16 April this Court decided his/her imprisonment on grounds of belonging to a terrorist organization, cooperation with this organization, and possession of weapons and explosives for terrorist purposes. He/she was held incommunicado, based on a judicial order of Central Investigating Court No 3 that described the measure as proportionate, necessary and appropriate. During his/her detention he/she was examined by the forensic expert of the Examining Magistrate's Court of Vitoria (Álava/Araba) on 14 April at 02.46 am. Subsequently, the forensic expert of the *Audiencia Nacional* carried out the examination, in particular, on 15 April at 10.00 am and at 07.30 pm, and on 15 April at 02.40 pm without any incident being observed. To his end, police measures No 2011-101883-00000003 were taken and Central Investigating Court No 3 of the *Audiencia Nacional*, that had ordered preparatory proceedings No249/2010, was informed in writing.

Regarding these detentions and particularly the treatment received by the detainees, we would like to highlight that the detainees' rights recognised in the current legislation were fully respected, included those of the Instructions 12/2007 of 14 September of the State Secretariat for Security.

With respect to the particular circumstances of the detentions it has to be said that:

- **all the above-mentioned detentions were conducted as result of serious evidence of involvement in terrorist acts, which were subsequently sustained by the competent judicial authority**
- In all the cases, the **competent central investigating judge ordered their incommunicado detention considering that there was enough evidence of their involvement** in terrorism crimes
- **The day of the detention detainees were examined by the forensic doctor of the nearest place and once transferred to Madrid the forensic doctor of the Duty Court of the Audiencia Nacional carried out a daily examination**
- As established by LECRIM for these situations, detainees **were assisted by a duty solicitor when giving evidence**
- **Detainees were properly treated during their stay in the Guardia Civil's headquarters. They were not handcuffed, nor hooded, nor blindfolded while taking statements, and did not stand for extended periods. Duty solicitors were also present during the interviews, all of which were carried out according to legal requirements.** The starting and end time of the questionings, names of the officials in charge of the interrogations, investigator and Clerk of the Court, as well as the description of actions carried out were recorded in writing.

Moreover, as mentioned in several past reports and last March in the response to paragraph 15 of the 2011 report visit, it is known and it is a proven fact that ETA has a strategy for the group's detainees consisting of always reporting systematically "ill-treatment" inflicted in police premises by Law Enforcement Officers involved in terrorism investigations.

This "*modus operandi*" is well-known and there even exist documents of the group in which mention is made of the obligation for members to do so. Thus, aiming to develop this strategy, ETA and its adherents, the so-called "Izquierda Abertzale" have established several organisations (Torturaren Aurkako Taldea-TAT, Askatasuna, Etxerat o Giza Eskubideen Esusal Herribo-behatokia) to galvanize and make this alleged ill-treatment be known socially and internationally.

Their objective is to internationally tarnish the reputation of the State and its institutions, and to discredit counter-terrorist activities. They also aimed to prevent Law enforcement officials that participate in terrorist investigations from carrying out their job by involving them in criminal proceedings that imply many procedural steps. This is the context in which detainees and supporters' allegations have to be understood.

Paragraph 25 (Behaviour of Law enforcement officials during interviews)

The CPT calls upon the establishment of 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.

In the response to the 2007 CPT report, the subject of interviews by Law enforcement officials was discussed in a broader framework. All legal instruments ratified at international level, binding on our country, and that Law enforcement members must strictly complied with were extensively indicated.

Furthermore, mention was made to domestic law, namely to the *Ley Orgánica 2/1986*, of 13 March, on Law Enforcement Agencies, which states in Article 5 that: "*The basic acting principles for all members of Law enforcement agencies are: 1. Compliance with the legislation, and especially: (a) Carrying out their function with full respect for the Spanish Constitution and all other legislation*", as well as "*(b) Acting impartially and with no discrimination whatsoever based on race, religion or opinion, and behave with integrity and dignity*". Furthermore, they must avoid any improper, arbitrary or discriminatory practice entailing physical or moral violence, and maintain themselves at all times correct and conscientious when dealing with the citizens. They must also protect the life and physical integrity of individuals under their custody or arrested by them, respecting their honor and dignity.

Further on, Article 5.3.c), relating to the "*treatment of detainees*", states that "*complying with due diligence, they shall abide by formalities, deadlines and requirements established by legislation, whenever they proceed to arrest a person*".

And, finally, Article 11.1, reflecting what is already established in Article 104.1 of the Spanish Constitution, states that "*Law enforcement officials have as their mission that of protecting the free exercise of rights and freedoms, and of guaranteeing public safety*", which, in turn stems from Art. 53.1 of the Spanish Constitution, according to which "*all Public authorities are bounded by rights and freedoms (...)*".

Therefore, their duties include keeping and restoring public order and safety, preventing perpetration of criminal acts, and investigating crimes in order to discover and arrest the alleged perpetrators, as stated in Article 11.1. e), f), g).

Failure to fulfill these rules leads to penalties for Law enforcement officials which are contained in the rules of their disciplinary regime, in the *Ley Orgánica 2/1986* of 13 March and in the Criminal Code.

Therefore, it is considered to be unnecessary to establish a code of conduct, as recommended by the CPT, since it would be redundant with what is stated in the procedural and criminal rules, as well as in the regulations governing the action principles of Law enforcement officials. Its adoption would not reinforce the binding nature of these principles since, as already mentioned, a penalty regime is already applied whenever they are violated.

Moreover, it should be also reminded that in order to ensure that the rights of detainees and persons under police custody are respected, **domestic instruments, still in force and being implemented**, such as Instruction 12/2007 of the State Secretariat for Security.on the conduct required from Law enforcement officers, **have been established**. Thus, the approval of a new instrument with similar content would be inefficient and would entail an unnecessary multiplication of rules and deontological mechanisms.

Furthermore, **prohibition of certain practices, as the ones pointed out by the CPT, is not only reflected in the aforesaid rules, but it is also included in all Law enforcement agencies' curricula**. Law enforcement officials are thereby required to be aware of these rules and, in particular, to adapt their behaviour and the potential use of force to them and to the principle of proportionality, as reiterated by constitutional case law.

In that sense, we would like to remind the **important effort that Spain is making regarding the training of Law enforcement officials and forensic experts to make them more aware and vigilant to potential cases of ill-treatment inflicted to detainees**.

To this end, with the assistance of Amnesty International, a Working Group was established within the Ministry of the Interior in 2005 to train the various Law enforcement officials on the protection of human rights. In the same way, measure 104 of the Human Rights Plan approved in December 2008 provides for the organization of conferences to introduce Law enforcement officials to the operations and scope of international human rights defense organizations, such as the CPT.

Moreover, Law enforcement Agencies' centres for retraining and specialization organize ongoing training activities through courses, symposiums and seminars for all police fields (terrorism, organized crime, minors (under 18), gender-based violence, racism and xenophobia, foreign persons and borders, drug trafficking, etc.).

It should be also highlighted that training on the use of arms and personal defense is guided by the Basic principles of action of the *Ley Orgánica 2/1986* of 13 March which in turn are based on the “*Code of Conduct for Law Enforcement Officers*”, the “*UN Universal declaration of Human Rights*” and the 1978 Spanish Constitution.

Apart from this training, Law enforcement officers participate in ***ad hoc* international courses**:

- “Human Rights and Police Ethics Course” held in CEPOL (Sweden 2010 and Slovenia 2011)
- “Military Observers for UN Peacekeeping Operations Course”. Course already held 21 times and containing a module on Human Rights.

Finally, in Spain as a Democratic State, monitoring of Law enforcement officers' mission is not only carried out by the Authorities and the Ombudsman - through the MNPT – but also by the Spanish Courts.

Having described the regulatory framework applicable at the time of writing the present report, we would like to deal with the issues raised by the CPT.

First of all, it must be noted that questionings conducted by National Police officers are completely in line with the instructions and criteria established by the Criminal Investigation Police and approved by its National Coordination Commission. These rules establish that the interrogation record must reflect identification data of the person conducting the interview, the person acting as secretary in the proceedings, the declarant, the solicitor and any other person involved (legal representative, doctor, translator, etc.)

a) Informing detainees about the identity of the persons present at the questioning (name and/or identification number)

Before questioning starts it is necessary to request the Bar Association to appoint a Duty solicitor.

The interview starts once the Duty solicitor arrives at the police premises. Before him/her a record is signed by the intervening parties (detainee, solicitor and Law Enforcement officers acting as the person conducting the interview, the officer acting as secretary in the proceedings).

Thus, intervening parties are fully identified, the starting and finishing hour of the questioning are recorded as well as any incident that might occur, interruptions due to the detainees' fatigue or breaks due to the long duration of the interviews.

Moreover, Instruction 12/2009 of 1 June, of the General Secretariat for Security regulating "*Detainees Register and Custody Book*" responds to a recommendation made by the CPT. It regulates the procedure of noting any incident that might occur during questioning, transfer and custody of detainees. Information regarding detainees' chain of custody is also reflected making it possible to identify Law enforcement officials responsible for it during the time detainees are at the police premises. Any change in the chain and time must be written down.

Furthermore, Instruction 13/2007 of 20 September regarding the use of personal identification number on Security Forces' uniforms provides for the obligation of Law enforcement officials wearing uniform, including special units officers such as of riot police, to show their personal identification on it. This measure makes it possible for citizens to identify Law enforcement officials and prevents illegal acts to be carried out by taking advantage of anonymity.

b) Illegal duration of the questionings and c) breaks and time between diverse questionings.

Regarding the duration of the questioning, there is no fixed time established by LECrim. Only the starting and ending hour, the duration, incidents and breaks are required to be reflected on the statement. Additionally, Article 393 stipulates that if questioning is to last long or detainees might get confused making it impossible to continue the interview, then the questioning must be interrupted the time needed for the detainees to rest and calm down.

In the same line, Instruction 12/2007 of the State Secretariat for Security provides that:

"Detainees shall only make a statement of their own will in circumstances that do not diminish their decision-making capacity or judgement and shall be not cross-claimed, nor reprimanded. They may state what they deem necessary for their defence and that will be duly noted. Should detainees become tired due to the length of the questioning, it shall be suspended in order to give them time to rest".

Moreover, all this is duly noted in the relevant register form and before a solicitor as established by Law. However, it might happen on an *ad hoc* basis that a record not containing all these details is signed, especially when the content extend makes it clear that the questioning has been brief. It must also be said that all detainees' statements are made in the presence of a solicitor who might, at all times, include in the record any incident he/she may consider appropriate. However, the Directorate-General for the National Police has been informed, and the need to remind the obligation of complying with all requirements will be considered.

c) Place of the interviews

On a general basis, questionings are conducted at police or judicial premises or the prosecutor's offices intended for that purpose. However, exceptionally, they might take place in health centres or prisons or even at the detainee's house. In any case, the measures taken and the exact place where they are carried out are always recorded.

d) Systematic record of the persons present in the interviews, of the starting and end time of the questioning, and of any request made by detainees during it

It should also be noted that the afore-mentioned Instructions of the State Secretariat for Security are implemented; thus at the end of the interviews, and according to procedural rules, every measure taken must be recorded immediately and signed by all those present, and potential incidents be indicated at the end. In all case, duration of the questioning must be reflected. Detainees and their solicitors have the right to read the document before signing. Should they not use this right, the civil servant acting as secretary will read through it and will record this circumstance.

Moreover, Ruling 21/1997 of 10 February of the Constitutional Court, Legal Basis V, states that the possibility for the solicitor to read and verify the reliability of the record transcription handed to be signed is a protecting right for detainees.

As previously indicated, the starting and ending hour of the questioning, the name of the persons present, and any incident that might happen must be reflected on the record.

Finally, regarding the recommendation to adopt a code of conduct for interviews, apart from current legislation at international and national level, specific rules, and training curricula that already establish the conduct required from Law enforcement officials, some specific instructions have been issued over the past few years thus showing the particular awareness existing for this issue.

The following instructions of the State Secretariat for Security can be listed:

Instruction 11/2007 of 12 September, by which "*Police Action Protocol for Minors*" is adopted

Instruction 12/2007 of 14 September on the conduct required from Law enforcement officials in order to guarantee the rights of persons detained or in custody.

Instruction 12/2009 of 3 December by which "*Detainee Custody and Register Book*" is regulated

With regard to the use of hoods or blindfold during questionings, this practice is not only expressly forbidden, but it is punishable under the Spanish Criminal Code.

In fact the Spanish legal system establishes that solicitors must always be present during questionings and forbids the use of any coercive measures. Failure to fulfil this obligation shall imply the application of *Ley Orgánica 2/1986* of 13 March that establishes as basic principle for Law enforcement officers' action the full respect for the Constitution and any other law. These conduct standards are supported by Articles 173, 174 and 607 bis of the Criminal Code in which torture and ill-treatment are described as an offence.

Based on these rules, and as previously noted, **Instruction 12/2007 of 14 September establishes that:**

"Detainees shall only make a statement of their own free will so that their decision-making capacity or judgement is not diminished. Neither counterclaims nor disciplinary measures shall be permitted. They may state what they deem necessary for their defence and it should be duly noted. Should detainees become tired due to the duration of the questioning, the interview must be suspended in order to give them time to rest".

The use of any physical force or psychological pressure to obtain a statement from detainees is strictly prohibited by the Spanish legal system. The use of such methods constitutes a criminal or disciplinary offence and, as such, shall be prosecuted".

Based on the afore-mentioned information the recommendation made is thus considered unnecessary since it would be a repetition of what is stated in the procedural and criminal rules, as well as in the regulations governing the action principles of National Police officers.

Paragraph 26 (Improvement of record-keeping in the context of incommunicado detention. Application of video and audio recording should be extended)

The CPT recommends taking 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 to all parts of the detention area, including the interrogations rooms and the cells.

1. With regard to detention record-keeping, particularly in the Guardia Civil's premises at c/ Guzmán el Bueno, Directorate-General for the Guardia Civil:

It should be firstly noted that a new type of "*Detainees Register and Custody Book*" has been adopted in order to improve the information contained on it and know, at all times, any incidents that may occur from the moment a person is detained until he/she is taken before the judge or released. On 3 December 2009, Instruction 12/2009 of the State Secretary for Security by which the new Detainees Register and Custody Book is regulated, was adopted.

This record has been used since 1 February 2010 in all detention premises of the Guardia Civil and National Police.

The Minister of the Interior has informed about its characteristics: It has 100 data sheets, each of them with two pieces of paper of different colour: the first one, a white carbonless paper is the "**custody detainees' data sheet**". Its verso contains 18 boxes **in which any change in the custody chain, incidences and data related to prison cell removal must be noted down**.

The second one, a single-sided yellow paper is the "**detainees' register certificate**". Apart from the carbonless data of the "**custody detainees' data sheet**" it includes other sections regarding the inmate's release from prison and a space for **custody detainees' data sheet recording** that must be filled in along with sections on the reverso of the **this sheet**, once the detainee has been released.

When detainees are brought into law enforcement establishments, each section of the reverso of the custody detainees' data sheet - that are automatically copied in the detainees' register certificate - must be filled out.

Once all the sections have been filled in, the custody detainees' data sheet is tear out from the Register Book to fill in its reverso and the detainees' register certificate remains in the book. The "detainees' register certificate" does not include thus the data of the reverso of the custody detainees' data sheet, which is torn out. This lack of data may have led the CPT to think about a potential lack of transparency, as it is mentioned on its report.

When the number of incidences exceeds the number of boxes of the reverso of the custody detainees' data sheet then a new data sheet shall be used to write down. This sheet shall be torn out from the Register Book after its following reverso boxes are filled out: "No. of order" and "Detainee's data" (Name, surname and ID). "*Complementary data sheet-custody, continuation of data-sheet with control number, ...*" shall be written down in the box "other remarks". Finally, at the bottom of the boxes ("*Continues in data sheet with control number*...") the control number of the new data-sheet shall be noted and both sheets shall be then stapled.

When detainees are released, note must be taken in the boxes provided to this end in the reverse of the "*custody detainees' data sheet*", on the verse of the "*detainees' register certificate*" and in the "*detainees' list and data in summary form*" that is not torn out from the Register Book.

Once detainees are released, the "*custody detainees' data sheet*" must be submitted to the person responsible for its record, who shall sign the "*custody data sheet recording*" space provided for this purpose on the "*detainees' register certificate*".

In practice, detainees' register is carried out properly and the "detainees' register certificate"- that is not torn out from the book - are filled out following the instructions previously mentioned. However, some small incidences have been observed:

- a) Some data such as: "*Detention incidents*", "*transfer incidents*", "*illness*", "*medication*", do not figure. This is due to the fact that there was no data to be included or that it was considered not to be strictly necessary to indicated it. That is, should have something been noted down, "not observed" or a similar comment would have then been written. Therefore, lack of data must only be considered as a mere omission of information that did not exist.
- b) In some sheets the space provided for "*custody data sheet recording*" has not been filled in. This is probably because it was wrongly considered that just filling in the reverse of the *custody detainees' data sheet* and the "*detainees' list and data in summary form*" – that are not torn out from the book – was enough.
- c) There is a separate sheet of "*detainees' list and data in summary form*" because only two sheets of paper to note 54 possible records are provided in the register book, but the fact is that 100 data sheets are contained in it. In this particular case it was necessary to add a photocopy of the sheets to continue writing.

In the light of these kinds of incidences in the keeping of records and filling in of the Detainees Register and Custody Book, some measures have been taken to improve and ensure an adequate control and, therefore, reinforce safeguards.

Thus, the person who had been in charge of the register book until now has been replaced by an officer of the *Unidad Central de Apoyo Logístico* (UCAL) [Central Logistical Support Unit] of the Directorate-General of the Guardia Civil. This officer has, as an additional task, the responsibility to monitor how detainees' data sheets are filled in. He/she also has to identify the law enforcement officer who takes it from the UCAL and ensure that all boxes of the detainees' data sheet are duly filled out. Moreover, he/she must talk with the person in charge of the proceedings immediately before detainees leave the cells in order to verify this.

2. **Regarding the recording of people held in incommunicado detention**, this is not explicitly regulated by LECrim. Central Investigate Judges of the *Audiencia Nacional* have to determine in each case and by means of an Order such a measure once the incommunicado detention has been issued. The same should be applied for audio recording through a Court Order, although in this case a judicial authorization should be necessary since it would mean phone tapping.

In these cases, recordings are made available to the competent Central Investigating Judge and subsequently are made available for the corresponding Sections of the *Audiencia Nacional*.

Furthermore, in compliance with the recommendations made by human rights international bodies, Human Rights Plan of the Spanish Government, adopted on 12 December 2008 by Council of Ministers included the following measure (No 97 b):

"Technical and policy measures shall be addressed in order to comply with human rights bodies' recommendation to record on video or on any other audiovisual device the entire period of time that detainees are held in incommunicado detention at law enforcement premises".

In that sense, Law Enforcement Officers are complying with all judicial decisions ordering the recording of detainees held incommunicado. In order to do so, police facilities are being equipped with proceedings rooms (statements, unsealing of seized items and other proceedings) and the necessary technical means such as advanced recording systems for common areas.

Regarding the installation of video cameras in all detention centres, sources from the State Secretariat for Security of the Ministry of the Interior have informed that this is being done in common areas of the National Police and Guardia Civil's premises. Basque and Catalonian regional police's premises are also equipped with video surveillance to prevent ill-treatment.

With regard to monitoring coverage in police premises, video cameras are installed in common areas by which detainees and prison officers responsible for their custody go past to undertake the necessary proceedings (forensic expert's visit, taking of statements, identify parades, judicial commissions and food provision for detainees).

However, interrogation rooms are only equipped with video cameras if the judge conducting the examination proceedings recommends it. In any case, the taking of statement is legally ensured by the lawyer in charge of this proceedings.

Finally, all accesses to cells are under video surveillance but not the cells, which have no video cameras in order to preserve detainees' privacy.

Paragraph 27 (Proper judicial oversight of persons held incommunicado detention during the first hours of custody)

The CPT indicates that there continues to be a lack of proper judicial oversight of persons held incommunicado detention during the first 120 hours of custody.

The CPT is referred to the response given for paragraph 20.

Paragraph 28 (A more proactive approach to be adopted by judges in respect of what is stated in Article 520 bis of LECrim)

The CPT recommends 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 of LECrim.

Once again Spanish authorities would like to underline the independent nature existing within the Judiciary. This implies that its governing body cannot issue instructions regarding law enforcement and interpretation of the legal system by judges and magistrates when carrying out their judicial function.

Therefore, given this independent nature, enshrined in the Constitution and the *Ley Orgánica* of the Judiciary, it is difficult to comply with the recommendation of the CPT for the “*General Council of the Judiciary to encourage judges to adopt a more proactive approach*”.

The General Council itself already emphasised this circumstance in its response report, reminding its duty to refrain from issuing instructions whether general or particular.

Moreover, the power provided for in Article 520bis.3 of LECrim is just that, “a power” that judges hold within his/her judicial function and that can be exercised whenever they consider it necessary after weighing up interests.

Despite the optional nature to exercise their power, there exist, within the General Council of the Judiciary, an element to carry out the only possible control from this body: disciplinary power, provided for in *Ley Orgánica* of the Judiciary, (Article 107.3 along with Article 133) exercised through a particular Commission.

Therefore, despite the margin of judgement for Examining Magistrates as regards the choice of means deemed necessary to investigate a case – a reflection of the principle of independence and integrity in the performance their duties – should serious defective exercise of their duties or failure to comply with them be noticed, there exist the possibility -provided in Title III, Book IV of *Ley Orgánica* of the Judiciary- of making them liable in civil, criminal or disciplinary contexts, without previous warning.

This accountability results from the constitutional relevance of the judicial career. **Any Judge infringing independence duty or not submitting to the Rule of Law, or causing damage to third parties while exercising his/her duties, shall be subject to Law and accept a criminal sentence, administrative sanction or obligation to provide compensation.**

Paragraph 29 (Keep under review allegations of ill-treatment by judicial authorities)

The CPT reiterates the recommendation made in paragraph 16. It also recalls 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.

As a starting point, it should be said there are some elements to be taken into account regarding allegations or comments of ill-treatment during the incommunicado detention. On the one hand, as contained in the Order issued by the Provincial Court of Madrid on 24 June 2010, the fact of providing evidence or showing signs of ill-treatment is notoriously difficult since individuals are held incommunicado. This is even more complicated when alleged ill-treatment leaves no physical signs. On the other hand, it cannot be ignored that detainees might have personal interests to invalidate statements made while being held and in which they incriminated themselves or others.

Consequences of ill-treatment during detention, whether incommunicado or ordinary, have a twofold dimension:

- On the one hand, it is described as a crime in Article 174 of Criminal Code, and as such the relevant legal proceedings must be conducted in order to sanction it
- On the other hand, it is an element that must be taken into account during trials opened as a result of a crime for which precautionary measures were taken, particularly regarding the value of evidence obtained through ill-treatment.

Since the report of the CPT does not mention this second element, **this report will focus on determining whether the Spanish legal system has the necessary instruments to ensure that facts mentioned by the CPT can be clarified**. Article 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted in New York establishes that "*Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given*".

The possibility of declining to proceed against allegations is highly limited by the Spanish legal system. Article 269 of LECrim establishes that "*once the allegation has been made, the Judge or civil servant in charge of confirming the acts shall proceed or shall ask to proceed, unless these acts are not of a criminal nature or the allegations are manifestly untrue. In both cases, the Judge or civil servant shall not take any action, without prejudice to the responsibility they may incur if the allegations were missed unduly*".

As it can be seen, only if the alleged acts are not within the scope of criminal law or the allegations are untrue can the judicial body not investigate such acts.

By way of example, the aforementioned Order of the Provincial Court of Madrid and that of Álava of 1 July 2004 - both relating to alleged ill-treatment inflicted during detention - reflect the content of Article 269 stating that at the beginning of the proceedings the judicial body's scope for decision is very limited since it is required by law to prefer formal charges, unless acts were not of a criminal nature – which is not the case -or allegations were manifestly untrue. Wording of this Article prevents that, based on suspicious of false statement or lack of credibility of the facts, action is not taken since the term used ("manifestly") leaves no doubt of the blatantly nature of the lie of false statement.

Moreover, the body responsible for preparing criminal cases regarding ill-treatment or torture is the Examining Magistrate's Court within its remit, which is different from the Central investigating judge - in charge of terrorist crimes proceedings. This is an additional guarantee of impartiality since Article 269 provides that opening of an enquiry must be conducted by the Examining Magistrate's Court.

However, although procedural provisions are very rigorous regarding the beginning of the proceedings, they do not provide for an exhaustive investigation of the facts in all cases, since enquiry measures are subject to relevance and suitability, as established in Article 311 of LECrim.

Furthermore, accusations or ill-treatment allegations during detention do not automatically give rise to oral proceedings against the accused. Article 779 of LECrim provides for different decisions that Examining Magistrates can adopt after the relevant enquiry has been conducted; one is the dismissal of action when the commission of the offence was not proved, or even if proven, its perpetrator was not identified. Should these circumstances not be given – i.e. there are criminal evidences and potential perpetrators are identified - then proceedings must continue.

However, judgements delivered by the judicial body can be challenged in appeal by Public Prosecutor's Office and other parties involved, included the injured party who is entitled by the criminal procedure to file claims.

That is why it can be affirmed that Judges are provided by the Spanish procedural legislation with the necessary means to duly investigate any ill-treatment allegation. There are no obstacles for the judicial body which has been informed of the alleged ill-treatment to request an immediate examination by a forensic expert in order to have corroborating evidence, and, as recommended by the CPT, to notify the relevant organ of such measure.

d. *Conditions of detention*

Paragraph 30 (Refurbishment of the detention cells at c/ Guzmán el Bueno, Madrid)

The CPT calls upon the Spanish authorities to proceed without further delay with the refurbishment of the detention cells at c/Guzmán el Bueno.

This was the second point the CPT required to be informed within three months. The response was sent by official letter on 13 March 2012; therefore you are referred to this document.

Paragraph 31 (Improvement of the cells at the headquarters of the Basque Police (Ertzaintza) in Arkaute)

The CPT recommends that immediate steps be taken to remedy the deficiencies at the headquarters of the Basque Police (Ertzaintza) in Arkaute so that all cells are equipped with a call bell and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded).

The relevant authorities have been informed of these recommendations.

Paragraph 32 (Persons detained for more than 24 hours can be offered 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.

Unlike prisons, Immigrant Removal Centres, or mental hospitals, **ordinary detention centres such as police stations, Guardia Civil's premises and judicial facilities are places where individuals are detained no longer than 24 hours** and therefore size and space correspond to this use.

From a financial point of view it would be possible to follow the CPT recommendation if this had to be applied only to a particular case, but the large number of detention centres and their diverse structures makes it impossible, since more than five hundred centres should then be involved.

That would be the case if all these premises were provided with enough and adequate outer space for the detainees to exercise, both those held incommunicado and those placed under ordinary detention.

Apart from that, and particularly in the case of the Guardia Civil, it should be noted that areas where detainees are held are parts of residential barracks of the Guardia Civil located in urban areas where families of Guardia Civil officers working in that place live in.

Aware of inconveniences for detainees of lack of better conditions regarding facilities security and comfort, all Guardia Civil officers in charge of detention proceedings try as far as possible that detention is limited to the minimum time necessary to conduct the corresponding proceedings. They also try deadline established by LECrim not to be reached and bring detainees before Court as soon as possible. That is why detentions exceeding 24 hours are considered an exception.

Therefore, and for all the foregoing reasons, the possibility of providing all detention centres with outdoor spaces for detainees to exercise is unworkable, in particular when periods of detention beyond 24 hours are exceptional.

DETENTION AND CUSTODY ORDINARY REGIME

Paragraph 33 (Zero tolerance for ill-treatment. Unauthorised items must be removed from police premises)

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.

The CPT recommends that all unauthorized items be removed from the premises where persons may be held or questioned.

Regarding zero tolerance for ill-treatment we would like to remind that:

The fundamental rights and liberties that our Constitution recognises and guarantees are interpreted in accordance with the Universal Declaration of Human Rights and international treaties on that subject that have been ratified by our country. The promotion of these rights and the establishment of guarantees and mechanisms to safeguard them and prevent violation are permanent principles of the Spanish Government.

In this sense, the Ministry of **the Interior has always applied, with no exception, the principle of zero tolerance for the potential violation of the constitutional rights**. In case of suspicion of violation, the Ministry of the Interior has always encouraged investigations, transparency and cooperation with the rest of the powers of the State, in particular with the Judicial Power.

There already exists a protective framework for the detainees' rights which is covered both by national rules and diverse international regulatory instruments ratified by Spain and included in our legal system.

Among them, the main ones are those from the United Nations (the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Economic, Social and Cultural Rights) and the Council of Europe (the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms and the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment).

This legal international framework has given special attention to the development of a set of principles and rules for professional and ethic conduct that can be applied to police work in order to prevent irregular behaviour. The general policy of the Ministry of the Interior adopts these principles as the basis for establishing measures to prevent and eliminate torture and other forms of cruel, inhuman or degrading treatment or punishment.

All these principles have been taken into account for the drafting of Police Staff Regulations in force and have particularly inspired the potential circumstances and guiding criteria regarding the use of force, which are in harmony with the basic principles of action in **Article 5 of Ley Orgánica 2/1986 of 13 March on Law Enforcement Agencies**.

This act establishes as first basic principle of action for Security Forces the obligation to carry out their work fully respecting the Constitution and the other provisions included in the legal system.

Further, the proportionate use of force and the prohibition of any form of ill-treatment or torture is enshrined in Article 17 of *Ley Orgánica 11/2007* of 22 October governing the rights and duties of the Guardia Civil members, in Article 7.6 of *Ley Orgánica 12/2007* of 22 October of the disciplinary measures of the Guardia Civil that classifies as very serious offence inhuman, degrading or humiliating treatment inflicted to persons under their custody or to persons dealing with when performing their functions, and in Article 7d of *Ley Orgánica 4/2010* of 20 May of the disciplinary measures of National Police that classifies as very serious offence "*inhuman, degrading, discriminatory or humiliating treatment inflicted to persons under their custody*".

Under this set of rules, Law enforcement officials carry out thousand of police actions every year within the legal framework; also, within their function of protecting the fundamental rights and public freedoms of citizens, thousands of people are annually arrested always following what is established in the procedures of our legal system.

As a result, **cases in which police action is not in line with these principles are very rare. The full respect of fundamental rights as well as of dignity and integrity of detainees is the general rule always followed by National Police and Guardia Civil Law enforcement officials.**

Although, as explained, improper behaviour, irregular functioning or violation of detainees' rights are an exception, **the implementation of the zero tolerance principle against torture and ill-treatment inflicted by Law enforcement officials shows the determination to eradicate even these few cases of alleged irregular behaviour.**

In order to do so, the Government has substantially stepped up the instruments already existing in the Ministry of the Interior to ensure that police actions are law-abiding.

a) Inspectorate for Staff and Security Services of the State Secretariat for Security

Inspectorate for Staff and Security Services is the first instrument that has been strengthened. It is the means by which the Ministry of the Interior can determine whether actions of Law enforcement officials have been in line with the Spanish legal system and with the existing protocols, and whether citizens' rights have been respected or not.

Moreover, there is currently a **specific computer application to collect and keep under review claims** made against civil servants for violating human rights when performing their functions.

The idea is to be rigorous as regards legal system and to determine where responsibility lies when infringement occurs.

b) Instructions for Security Forces

Further, via internal circulars of the State Secretariat for Security and Directorate-General for the Police and Guardia Civil, Law enforcement officials have always been informed of the importance of strictly respecting people's rights while acting during detention and custody.

However, in order to ensure a more effective protection of detainees' rights and higher transparency in Security Forces actions, the State Secretariat for Security has established a set of specific and up-dated instructions so that these rights can continue to be safeguarded and Law enforcement officials can have enough legal guarantees at the time of arrest and then during custody.

Among these instructions, the following can be highlighted:

- **Instruction 4/2007** on the implementation of the Optional Protocol to the Convention against Torture and other forms of cruel, inhuman or degrading treatment or punishment.
- **Instruction 11/2007** by which "*Police Action Protocol for Minors*" is approved
- **Instruction 12/2007** on the conduct required from Law enforcement officials in order to guarantee the rights of persons detained or in custody.
- **Instruction 12/2009**, issued by the State Secretary for Security regulating "Detainees Register and Custody Book".

c) Police training

Finally, regarding Law enforcement officials training on human rights, it should be noted that a significant part of **training plans contents as well as curricula of Guardia Civil and National Police** include operational and legal aspects regarding police action and human rights.

As for the recommendation that all Law enforcement officials should be reminded that no more force than is strictly necessary should be used when effecting an apprehension, our commitment to fulfil this is demonstrated by the adoption of **Instruction 12/2007** of the State Secretariat for Security **on the conduct required from Law enforcement officials in order to guarantee the rights of persons detained or in custody**.

Section VII of this Instruction, dedicated to the use of force during detention, reads as follow:

1. *Exceptionally, Law Enforcement Officers are authorised to use force during detention in case of resistance to arrest, detention conducted under circumstances that might imply serious risk to citizens security, and in case of third persons or Law enforcement officials' lives or physical integrity are seriously at risk*

2. *First, Law enforcement officials must identify themselves and inform of the legitimacy of their presence. In order to make an individual abandon potential violent attitude, a stern warning can be delivered*

3. *Should the use of force be strictly necessary, Law enforcement officials must assure that intensity and means employed are the most appropriate and shall act in line with the principles of appropriateness, consistency and proportionality:*

a) Appropriateness must be understood as the decision whether resort to physical force during detention is necessary after taking into account the information on the situation and the individual concerned

Law enforcement officials must weigh circumstances of the place, information on the suspect, danger or predictable reactions, and build on previous experience to determine whether detention can be conducted using non-violent means

b) Consistency. Once Law enforcement officials have decided to use force, in order for this to be legitimate, the most appropriate means for that particular situation shall be chosen among all the legally existing and envisaged, considering the characteristics, performance, degrees and other factors of the means to be used.

Law enforcement officials shall use skills learned during their training in the use and master of that means and shall exercise control over themselves and remain calm even when dealing with risk situations

c) Proportionality means that, once the employment of force and appropriate means have been decided upon, Law enforcement officials must adjust the intensity of the means so that only the strictly necessary to keep the individual under control is applied, excessive intensity being forbidden.

In order to do so Law enforcement officials shall take into account the following:

- *Obligation to inflict the least possible damage. Selection of non-vital bodily functions parts, intensity and way to proceed must aim at putting the concerned person out of action*

- *Action shall be gradual and appropriate for each situation. Use of more or less force shall be proportional to the detainee's aggressiveness and shall decrease as situation facilitates detention*

4. *Use of arms shall only be allowed in case of third persons or Law enforcement officials' lives or physical integrity are at serious risk. They shall be employed in accordance with the principles of appropriateness, consistency, proportionality*

5. *Use of arms not included in the official equipment of Security Forces or the use of which has not been expressly authorised, shall be strictly forbidden during detention or any other police action*

6. *Regardless the detainee's behaviour during detention, no violence shall be justified once the detainee has been restrained*

7. *In case of detention of persons seriously intoxicated with alcohol, or under the influence of narcotic drugs or suffering from a mental disorder, even transient, they shall be transferred to a health centre with the utmost urgency*

In addition, in line with the principle of zero tolerance towards this kind of situations, Public Powers encourage citizens to adopt a proactive conduct and thus systematically denounce any type of behaviour or offence implying violation of their rights.

In this sense, in order to establish a standard way for citizens to file complaints regarding actions and functioning of Security forces, Instruction 7/2007 of State Secretariat for Security has been approved. Among other measures it is established that a **book for complaints and suggestions** shall be at the disposal of citizens in all police premises. Complaints shall be duly investigated and suggestions duly responded to. The Inspectorate for Staff and Security Services of the State Secretariat for Security shall be responsible for the coordination and follow-up of the investigation.

Finally, with regard to the removal of unauthorized items from the premises where persons may be held or questioned, we would like to point out that as already mentioned during the meeting on the conclusions between Spanish authorities and the CPT delegation held on 13 June 2011, the objects sawn by the CPT in some police premises are intercepted or seized items belonging to people arrested for alleged crimes or for their intention to commit them. For instance, baseball bats and a motorbike helmet carried by 200 football extreme supporters were seized by police last October in Barajas airport when these people were about to travel to a European city.

In fact, this police action is detailed on the report of the MNPT (paragraph 67 of your 2010 report). It is explained that when an individual is to be arrested, police officers carry out a first and slight body search; then in police premises, before individuals are taken to the cells, a second and exhaustive body search is conducted. During this search their personal belongings, objects and clothes that might be used to hurt themselves, other detainees or Law enforcement officials (such as chains, belts, scarves, shoelaces, watches, rings, lighters, matches, etc.) are taken from them. These objects are detailed in the Detainees Register and Custody Book signed and agreed upon by detainees. The report also mentions that “*cupboards or lockers in the custody area are used to storage seized objects, as well as safe deposit boxes for the most valuable ones*”.

This is the only reason for the objects sawn by the CPT in the police premises to be there; it was not a “display” of intimidating objects. However, on the 13 June 2011 meeting, note was taken of the recommendation made by the CPT. Having talked with the former Directorate-General for Police and Guardia Civil, such objects were removed and measures have been taken to prevent future potential situations that could give raise to misunderstandings.

Paragraph 36 (Detainees must be informed that they will be able to contact someone of their choice to inform of their situation)

The CPT recommends that record should be taken of the fact that detainees have been informed of their rights to contact a person of their choice as well as the time this contact has taken place. It also recommends that the time the custody is informed of should be recorded.

Pursuant to Article 520.2 of LECrim, Instruction 12/2007 (Instruction III) of the State Secretary for Security expressly establishes the obligation to immediately inform detainees of their right to notify a relative or any other person of their choice about their situation (or the consular office of their country in case of foreigners detainees) and of their place of custody. Once relevant police and security measures have been taken by police officers responsible for the custody, the person in charge of the investigation may authorize the visits of relatives and closest persons during set schedules.

Failure to comply with this obligation may lead to be liable to disciplinary action and even criminal action (Articles 530, 531, 532 and 537 of Criminal Code) since constitutional or legal guarantees might be violated.

On the basis of the recommendations made by the CPT asking for the time of the notification of custody to be recorded, it seems that the CPT considers the Detainees' Sheet to be insufficient or lacking certain elements.

The Directorate-General for the Police and the Guardia Civil states that information regarding the notification to detainees of this right, its exercise and its result is always included in the police report. Moreover, lawyers assisting detainees can request information on the aforementioned right.

Paragraph 37 (Ex officio lawyers must attend police stations promptly)

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

The Spanish legal system guarantees detainees rapid and effective access to a lawyer (Article 17.3 of the Constitution and Article 520 of the Code Criminal Procedure).

From the very beginning, detainees have the right to choose a lawyer of their own and request his/her presence during police and judicial statements and any identification parade it may take place. It should be reminded that after modification of abridged trials and partial **reform** of the Code of Criminal Procedure on speedy trials for certain crimes and offenses by **Act 38/2002 of 24 October**, the presence of a defence lawyer is now obligatory from the moment a person is charged with a criminal offence. This reform has been of major importance since defence by a lawyer is now required not only for police measures that might be taken, but also for proceedings conducted by the Public Prosecutor's Office (preliminary investigation). That is, even in the pre-trial stage the defence lawyer will have to intervene.

Should no lawyer be chosen by detainees, then an *ex officio* lawyer shall be designated. In any case, the lawyer shall promptly attend police stations within a maximum of 8 hours.

The CPT considers that based on its visits and people met it appears that access to a lawyer in the course of ordinary detention in Spain has improved. It also commends the adoption, through Instruction 12/2007 of the State Secretariat for Security regulating measures aimed at reducing, as far as possible, the time taken by lawyers to attend police stations.

The said Instruction states that "*all available means to ensure the lawyer's presence at the police station at the shortest time possible shall be used*". "*In order to do so the request for legal aid shall be immediately made informing the lawyer appointed by detainees or, failing this, the Solicitors association. Should no lawyer arrive after three hours, the request shall be reiterated*".

Finally, the Instruction establishes the obligation to record all calls made to the lawyer or to the Solicitors association as well as any incidence it may occur.

However, the CPT states that in practice lawyers attend police stations only after several hours have elapsed.

The fact is that it is almost impossible to ensure the immediate presence of a lawyer at the police station, due to limited personal and technical means at the disposal of Solicitors associations, detention and custody centres.

In this sense, in order to reduce the current maximum period of 8 hours, a commitment to reform 520.4 of LECRIM is provided for in Measure 96 of the Human Rights Plan of the Spanish Government.

In order to comply with this commitment, the Government approved a **draft bill to establish new criminal proceedings**. It was provided that, following recommendations made by international organizations, **the maximum period for the lawyer to attend police premises should be reduced from 8 to 3 hours**.

General elections were held in Spain in November 2011. As a result, there was a change in government, parliamentary activity ceased and a new Spanish parliament was constituted. This implied the suspension of all the on-going processes for draft legislation. However, the **current Ministry of Justice declared in his hearing before the Commission on Justice of the Congress of Deputies, his intention to resume the reform of LECRIM in order to comply with the international commitments signed by Spain, and ensure that procedural safeguards are fully respected**. As already mentioned in this report, on 2 March 2012 the Council of Ministers agreed to the establishment of an Institutional Commission that will resume the work in the draft bill of the Code Criminal Procedure.

In any case, it should be mentioned that during the time taken by lawyers to attend police premises no measures can be taken nor can questions be asked to detainees.

Paragraph 38 (Right of incommunicado detainees to be examined by a doctor of their choice)

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.

In order to respond to this recommendation reference is made to paragraph 18. However, it should be reminded that Human Rights Plan of the Spanish Government (Measure 97c) already established that specific measures would be taken so as persons held in incommunicado detention may be examined both by the forensic expert and a doctor working for the public health system and freely appointed by the head of the future MNPT.

This important improvement will be materialized by the future draft bill to amend LECRIM. That is why **the possibility for detainees to appoint a doctor of their own choice is considered not to be justified, specially – as explained in this report and many others – because ETA terrorist group has always had and continue to have people who support them**. Should these adherents be called upon to act, arrests of its members or police investigation of commandos might be foiled.

Paragraph 39, 40 and 41 (Information on their rights in a language that they can understand)

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

Further, the CPT found that in several law enforcement establishments, registers were not filled out properly, in particular at Puente de Vallecas National Police Station, Madrid, where the times of apprehension and placement in a detention cell were not recorded accurately.

Finally, mention is made by the CPT to the computerised custody record in place at the headquarters of the Basque police. It found that it still did no permit basic verifications which would be useful when assessing the treatment of detained persons and considered that relevant authorities should grant appropriate access rights, on a need-to-know basis, to persons performing a monitoring role.

Regarding the first question, it should be reminded that Article 520 of LECrim clearly specifies the detainees rights, among which, being immediately informed in an understandable way the case against them and the reasons for them being arrested, the rights they are entitled to, including being assisted by an interpreter free of charge in case of foreigners not understanding or not speaking Castilian.

Moreover, Article 157.3 of Regulation implementing the *Ley Orgánica 4/2000* of 11 January on Rights and Freedoms of Foreigners in Spain and on their Social Integration, approved by Royal Decree 557/2001 of 20 April, states that any foreigner arrested must be informed of his/her situation and of police measures that are to be taken without language being an obstacle.

Articles 118 and 520 of LECrim provide that foreigners detained for their alleged participation in a crime shall be entitle not only to the safeguards recognised for Spanish nationals (Articles 118 and 520 of LECrim) but also to the right to request the consular office of their country being informed of their situation. Should they not speak Castilian, they will also have the right to be freely assisted by an interpreter who will translate all comments and doubts they may have regarding their rights and, if necessary, all relevant explanations about the functioning of the judicial system. In fact, in order to proceed faster with the necessary proceedings, information sheets on the rights of detainees have been drawn up in different languages.

In this sense, point 2 of Section IV of the Instruction 12/2007 provides that “*with the aim of complying with Article 157.3 of the implementing provisions of the Ley Orgánica 4/2000 of 11 January that establishes that any foreigner arrested must be informed of his/her situation and police measures that are to be taken without language being an obstacle, law enforcement establishments must have information sheets on the rights of detainees -who will be assisted by interpreters when necessary - drawn up in the most common languages.*

In order to comply with these regulations, all Spanish law enforcement establishments have printed sheets of the rights of the detainees drawn up in the most common languages. An interpreter may assist detainees if necessary.

With regard to recommendation of instructions being issued providing for the obligation for detained persons to attest in writing that they have been informed of their rights and have understand them (Paragraph 39), Instruction 12/2007 of State Secretary for Security establishes in Section III, 1st paragraph that “*once the detention has taken place, detainees shall be immediately informed in a language and way they can understand of their rights, contained in Article 520.2 of LECrim, of the case against them and the reasons for them being arrested*”.

This instruction, complied with by Law enforcement officials, is taught in the theoretical part of the training of National Police officers and practised in the practical part. In fact, “*general criteria on fast-track trials and proceedings by Criminal Investigation Police*” approved by the National Coordination Commission for Criminal Investigation Police, establishes in paragraph e) section 8 on Detention and Information of Rights, that detainees must be immediately informed of their rights in an language they can understand, and that this shall be recorded on the occasion of his/her initial appearance before the Court.

Therefore, this measure is recorded from the moment a person is held in custody (the person is provided with a sheet containing detainees' rights). Once the rights have been read and agreed by the detainee, he/she can sign, if he/she wishes, the sheet stating that he/she has been informed of his/her rights. This document is attached to others that shall be sent to the corresponding Court and is very often showed to the lawyer when intervening in all those act established by Law. Thus, safeguard that detainees are provided with their rights in writing and in an understandable way is adequately ensured, additional measures being then not necessary.

When detainees are taken to police premises they are once again informed of their rights and written record is made when “detention and information of rights form” is filled out. This form, listing the rights that have been informed of, must be signed by detainees, the officer in charge of the proceedings and the person acting as a secretary.

Finally, detainees are informed of their rights for the third time, in front of their lawyer, before giving statement.

That is, instructions are given to Law enforcement officials to inform persons of their rights when they are detained, when they are taken to police premises – when “detention and information of rights form” is signed by the detainees and attached to other police documents - and finally in front of their lawyer before making a statement.

Regarding assurance that detainees have understood their rights, in line with Article 440.3 of LECrim, it is ensured that police and detainees’ questions and answers are duly recorded in written in the detainees’ language so potential dispute concerning statements contents may be settle in Court and a legal interpreter be requested for their analysis.

Regarding Vallecás National Police Station and register books - that contain detention data and police report, and have to be filled out – the Directorate-General for the Police stated that they are diligently filled out since, in fact, its content must be included in the police report so that Public Prosecutor’s Office, Courts and detainees’ lawyers can be informed of the actions and police inspection services can conduct the relevant control.

Finally, with regard to the custody record system in place at the headquarters of the Basque police that did not permit basic verifications and the recommendations to take measures to computerize custody records, it should be noted that:

Within Security Forces, Instruction 12/2009 of the State Secretariat for Security regulates the “*Detainees Register and Custody Book*”.

This measure provides for a printed version of a register book which includes a “*detainees’ register certificate*” and a “*custody detainees’ data sheet*” (see paragraph 26). With the aim of guaranteeing the constitutional rights of detainees, the book is used as a document for recording the entry of detainees in police premises and the incidences that might occur from that moment until they are brought to justice or released.

If custody records were computerized, amendment to the aforementioned instruction would be then necessary.

Further, from a technical point of view, specific information systems used by Security Forces should incorporate this computerized record to ensure data integrity.

It should also be taken into account that, as an essential tool to safeguard the fundamental rights of detainees, integrity, availability and confidentiality of data should be guaranteed. Its implementation would imply high security measures, especially regarding users authentication.

Therefore, while conceptually simple, this computerization would imply a significant impact on Security Forces information systems and probably a high financial cost.

Notwithstanding the above, in order to improve custody register management the competent body has been informed of the recommendation and will study the need and usefulness of custody register computerization.

Paragraph 42-45 conditions of detention (Improvement of the cells conditions in several Law Enforcement Establishments)

Cells in the Madrid Guardia Civil Stations of Tres Cantos and Las Rozas lacked access to natural light. The CPT recommends that they be equipped with a call bell.

Poor ventilation remained problematic in the National Police Stations of Moratalaz and Puente de Vallecas in Madrid, and Puerto de Santa María in Cadiz. Further, the absence of call cells in certain establishments such as Moratalaz, meant that officers could not hear a detained persons 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.

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 7m²) 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.

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.

The establishments mentioned by the CPT have been informed of its recommendations so as material conditions can be improved within current budgetary constraints.

With regard to this, the Directorate-General for the Guardia Civil has noted that:

- Construction of a new detention centre is due to start before the end of May 2012 on the **Tres Cantos** Police Station land (Madrid). Each cell will be equipped with call bells.
- Electricity system and call bells have been checked in **Las Rozas** Police Station (Madrid) and are now operating properly.

Mention should be made to the important work carried out by the MNPT in Spain regarding the assessment of the conditions of detentions and other questions. This task was assigned to the Ombudsman through the *Ley Orgánica 1/2009* of 3 November, by which *Ley Orgánica* of the Judiciary is amended, and that supplements the reform law on procedural legislation aimed at creating a Judicial Bureau.

This independent body has been constantly working since then to prevent torture. Of particular importance are its preventive inspections conducted in 2011 and 2012 to some establishments.

Places of special interest for the MNPT are:

- Cells and other rooms for short detention periods in establishments of the National Security Forces, autonomous and local police
- Cells in justice buildings
- Police stations, air and naval bases, and training military centres
- Immigration removal centres
- Military disciplinary centres
- Civilian and military prisons
- Young offenders institutions
- Hospitals and approved medical centres for caring and forced confinement of individuals with mental or physical health disorders
- Educational or special training centres where young people (up to 18) are sent by their guardians following authorisation by a judicial authority
- Vehicles for detainees transfers
- Establishments where stowaways are detained
- Aircrafts and national flag vessels in which a person might have been deprived of his/her liberty

The aim of these inspections is to verify a series of common minimum standards of detention establishments. Depending on the centre different elements are checked. Of particular importance are:

a) Living conditions

- General condition of the building and assessment of need for refurbishment
- Detailed inspection (size, cleanliness, maintenance, lighting, ventilation, etc.) of the different units, paying special attention to cells, isolation cells, toilets, leisure rooms, parlours and other communication rooms, lunch rooms, kitchens, sport facilities and yards, places for worship, libraries and staff rooms
- Assessment of prison official capacity, number of staff, and compliance with average ratios and their development

- Detailed control of good and services such as food (especially of dietary options and quality control assurance), communication with the outside, occupational and training tasks, access to culture, etc.
- Control of items provided to detainees such as clothes, mats, sheets, blankets, hygiene kits, etc. and assessment of their condition and whether they are appropriate and provided in sufficient quantities.
- Assessment of measures taken to ensure respect for religious freedom

b) Security conditions

- Assessment of internal surveillance systems and existing protocols on the making, keeping, manipulation, access and custody of video records
- Assessment of fire-fighting and other dangerous situations systems, accessibility, emergency and evacuation protocols. Assessment of training given to staff and detainees on this subject.
- Verification whether channels of communication exist between detainees and custody staff
- Verification of adequate infrastructures and security material

c) Social and health conditions

- Sanitation facilities inspection and assessment of personnel and material
- Assessment of the intervention procedure and of actions taken in the emergency unit or when a patient is transferred to a reference centre
- Verification of drugs availability and protocols for their prescription and supplying
- Assessment of vaccination plans for staff and detainees as well as of health education programmes

d) Living conditions

- Assessment of timetables and activities programme offered by the establishment
- Assessment of the disciplinary system and its corresponding rights and safeguards scheme
- Assessment of vis-à-vis communications and communications through technical means

e) Compliance with law

- Verification of official register books required in each detention centre

Three hundred and ten visits have been conducted to different prisons until January 2012. The corresponding report shows the visits carried out by the MNPT to detention centres where people are held incommunicado. The report indicates that “*when two detainees were reported to be held incommunicado, it was decided to visit the Regional Unit of the said Department in Arcaute (Álava) (...). During the visit individual and private interviews with the two detainees held incommunicado were conducted as well as interviews with the forensic experts that carried out the physical and psychological examination, a detailed examination of the facilities, a verification of detainees treatment protocols, and a review of video recording of the custody area*”.

Therefore, relevant organs have been informed of the CPT recommendations. However, there already exists a national institution that conducts efficient and thoroughly supervisions regarding detention conditions.

PRISONS

Paragraph 46 (Prison overcrowding)

The CPT acknowledges the efforts made to reduce prison overcrowding and that this has been reflected in an improvement compared to the situation observed in 2007. Thus, despite an increase in the prison population of 9% during the intervening period, occupancy level has reduced from 143% to 112%. The CPT reiterates its recommendation that the Spanish authorities continue to pursue policies designed to put an end to overcrowding in prisons, having regard to the principles set out in Recommendations R (99) 22 and R (2003) 22 of the Council of Europe's Committee of Ministers.

Since last visit in 2007, prison administration has continued working to reduce overcrowding in order to comply with the recommendations of the Council of Europe. The policy adopted has been the following:

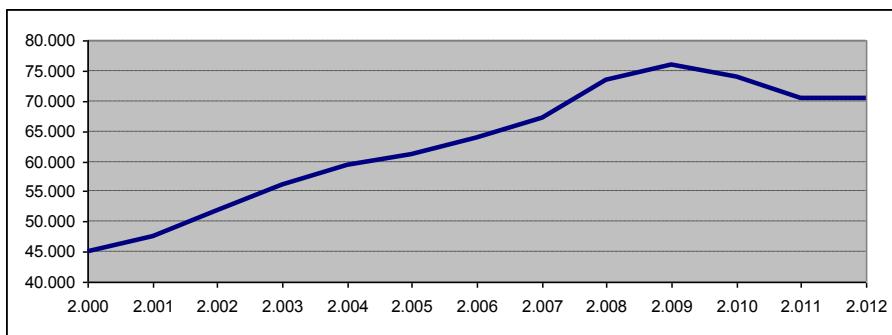
- a) Construction of new prisons according to the 2005-2012 Prison Infrastructure and Closure Plan of 2 December 2005 as updated.
- b) Promotion of open regime
- c) Promotion of alternatives measures to prison
- d) Programmes designed to promote social reintegration
- e) Promotion of outside contact for detainees (this question will be addressed in paragraph 76)

The policy adopted has been reflected in the most recent data on prison occupancy. In March 2012, inmates totalled 70,513, of which 60,025 are in charge of the General State Administration (General Secretariat for Prisons).

Further, increase of prison population has declined over the last years resulting in an improvement in occupancy. In 2010, prison population decreased 2.83% and 4.68% in 2011. It is estimated that by the end of 2012 the decrease will be of 0.06%.

The following table shows prison occupancy statistics over the last 12 years:

TOTAL PRISON POPULATION TRENDS IN SPAIN DURING 2000-2012 (FIGURES AT THE END OF EACH YEAR)													
Year	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Num ber of inmat es	45,1 04	47,5 01	51,8 82	56,0 96	59,3 75	61,0 54	64,0 21	67,1 00	73,5 58	76,0 79	73,9 29	70,4 72	70,5 13
%		+	+	+	+	+	+	+	+	+	-	-	-
		5.7	9.06	8.12	5.84	2.83	4.86	4.81	9.62	3.42	2.83	4.68	0.06



With regard to **infrastructure**, prison system managed by the General State Administration has the following facilities:

- 68 prisons
- 18 Social Resettlement Centres (dependent upon prisons)
- 13 Independent Social resettlement Centres
- 47 Custodial hospital wards
- 22 Open Regime Units
- 3 Mother and Baby Units
- 10 Day-Release Units
- 2 Prison Psychiatric Hospitals

The aim of the new 2005-2012 Prison Infrastructure and Closure Plan approved by the Council of Ministers' Agreement of December 2005 was to create 12,000 cells and 2,400 additional cells for the ordinary system. A sum of 1,647,209,000 euros was allocated.

In accordance with the aforementioned plan, the following prisons have been open since 2007:

Autonomous Region	Prison name	Number of places	Additional places	Total cells	Places In residences	Maximum possible places (beds in residences)	Opening date
Andalusia	PUERTO III	1,008	206	1,214	1,855	2,016	07/06/2007
	SEVILLA II	1,008	206	1,214	1,855	2,016	24/07/2008
Balearics	BALEARES – MAHÓN	92	38	130	169	184	28/07/2011
Canary Islands	ARRECIFE (Enlargement 1st phase)	148	22	170	272	296	30/06/2008
	ARRECIFE (Enlargement 2nd phase)	88		88	162	176	07/03/2011
	LAS PALMAS II (SAN BARTOLOMÉ)	1,008	186	1,194	1,855	2,016	14/07/2011
Cantabria	EL DUESO (Enlargement and renovation)	44	12	56	81	88	18/01/2008

Madrid	MADRID VII	1,008	206	1,21 4	1,855	2,016	15/07/200 8
Murcia	MURCIA II (CAMPOS DEL RÍO)	1,008	186	1,19 4	1,855	2,016	24/03/201 1
Basque Country	CP ARABA/ÁLAVA	720	152	872	1,325	1,440	21/09/201 1
Valence A. Region	CASTELLÓN II	1,008	206	1,21 4	1,855	2,016	17/06/200 8
Total		5,320	1,044	6,36 4	9,789	10,640	

The new prison of Navarra will be soon open. Details of it are the following:

Prison name	Cells	Additional cells	Total Cells	Places	Maximun possible places	Opening date
CP NORTE II (NAVARRA)	504	120	624	927	1.008	Previsto 2012

The following **Social Resettlement Centres** have also been open over the last years.

Autonomou s Region	Social Resettlement Centres 1	Place s	Addition al places	Tot al cell s	Places	Opening date
Andalusia	CIS Sevilla (Luis Giménez de Asúa)	200	4	204	408	03/07/2008
	CIS Huelva (David Beltrán Catala)	150	4	154	300	07/10/2008
	CIS Málaga (Evaristo Martín Nieto)	205	4	209	410	02/04/2009
	CIS Granada (Matilde Cantos y Fernández)	150	4	154	300	16/06/2009
	CIS Algeciras (Manuel Montesinos y Molina)	150	4	154	300	11/07/2009
Balearics	CIS Mallorca (Joaquín Ruiz Giménez)	150	4	154	300	23/10/2008
Canary Islands	CIS Tenerife (Mercedes Pinto)	150	4	154	300	30/09/2009
	CIS Lanzarote (Ángel Guerra Garrido)	50	2	52	100	18/12/2009

Cantabria	CIS Cantabria (José Hierro del Real)	50	1	51	100	13/10/2009
	CIS Segovia (José Antón Oneca)	50	1	51	102	12/02/2008
	CIS Valladolid (Máximo Casado Carrera)	99	2	101	200	10/02/2011
	CIS Albacete (Marcos Ana)	51	2	53	102	24/03/2010
Extremadura	CIS Cáceres (Dulce Chacón)	54	2	56	108	16/09/2009
Galicia	CIS A Coruña (Carmela Arias y Díaz de Rábago)	150	4	154	300	16/07/2009
Madrid	CIS Madrid – Alcalá de Henares (Melchor Rodríguez García)	204	4	208	408	07/07/2009
	CIS MADRID II (NAVALCARNERO)	200	4	204	400	22/09/2011
Murcia	CIS Murcia (Guillermo Miranda)	151	4	155	302	07/04/2010

Also, the following Mother and Baby Units have been open over the past few years:

Autonomous region	Mother and baby units	Total cells	Places in residences	Opening date
Andalusia	UM Sevilla	33	36	10/12/2009
Balearics	UM Mallorca	20	20	23/10/2008
Madrid	UM Madrid (Padre Garralda)	33	36	15/03/2011
TOTAL		86	92	

Recently, by **Council of Ministers' Agreement of 24 September 2010, the 2005-2012 Prison Infrastructure and Closure Plan was updated and prison places will be increased by 1,232.**

With regard to the **promotion of open regime, alternative measures to prison to serve sentence** have gained particular importance.

In accordance with Article 74 of Prison Regulation, open regimen is applied to prisoners who have been classified within this regime and enabled to access a day-release scheme. This regime makes thus possible for these **inmates to complete their sentence in Social Resettlement Centres, Open Regime Units or Day-Release Units** (Article 80 of Prison Regulation).

Further, **different types of prison open regime may be established for open regime centres** (Article 48 of Prison Regulation); these models have been promoted by Prison Administration over the last years. In particular, **mention has to be made to the regime type provided for in Article 86.4 of Prison Regulation** dealing with release on temporary licence. According to this Article, prisoners must stay in the premises not less than 8 hours and sleep there. Inmates might freely accept **to be monitored outside by tracking devices supplied by the Penitentiary Administration or other means allowing proper monitoring**. Should they choose this option they will have to stay in the premises only the time established in their treatment programme.

Regarding the **strategy of extending the use of alternatives to imprisonment or staying in prison**, it should be noted that a new legislative framework has been approved: **Royal Decree 840/2011 of 17 June**. This decree **provides for the implementing conditions of community services orders, continuous location of inmates in prison, certain security measures, suspension of custodial sentence enforcement and alternatives to prison sentences**. This regulation **promotes and streamlines alternatives to prison in three respects**:

1º Major importance is given to permanent electronic monitoring. Legal threshold above which it is applied is modified, thus, when it is imposed as a lighter punishment is extended from 12 days to 3 months. The option of imposing it as a less serious sentence for a period ranging from three months and a day until six months is also provided for. Exceptionally, in cases of continuous breach of regulations (currently only theft is considered) this measure shall be applied within the prison during weekends and holiday days.

2º Sentence to community services orders, consisting on volunteer unpaid social work performed for the community, was further regulated through a partial reform of the Criminal Code conducted in 2012 (*Ley Orgánica 5/2010* of 22 June, by which *Ley Orgánica 10/1995* of 23 October of Criminal Code was amended). Potential participation of prisoners in workshops, educational programmes or rehabilitation programmes (retraining, cultural, road safety education, sexual programmes, etc.) is provided for. The aim was also to enhance the social reintegration role of this sentence.

3º Security measures have also been reviewed. Parole, which implies compliance by convicts with judicial obligations and prohibitions, is now regulated. Parole is also provided for in cases of criminal danger (terrorism crimes and some criminal offences against sexual freedom and integrity) for individuals having served a custodial sentence.

Penitentiary Administration has also signed agreements with the Autonomous Regions, local authorities and organizations of civil society to draw up a rules and follow-up protocol to ensure the compliance by convicts with **community services orders or other alternative measures** that shall be carried out in a place near their home.

That is, the following action lines have been adopted:

- **Open regimen has been promoted.** This allows better reintegration of inmates since they are brought closer to community life. **Number of inmates in closed regime has also been reduced.** In September 2011, inmates in first security level was 1.80% of the total prison population, in second security level 77.5%, and in third security level 20.7%.

Figure evolution of inmates in each level compared to 2008 is the following:

CLASSIFIED INMATES	Closed Regime	Ordinary Regime	Open Regime
31-12-2008	2.0 %	80.0 %	18.0 %
30-09-2011	1.8 %	77.5 %	20.7 %

More places have been supplied for third security level, being currently **more than 9,000**; compared to 2008 the figures are as follow:

Open Regime Places	
30.09.2008	7,488
30.09.2011	9,047

Moreover, **training stages and specific intervention programmes in open regimen have been established together with non-governmental organizations** and other associations that collaborate in the penitentiary field.

- **Use of electronic tagging has been also significantly promoted so that inmates classified in third security level can spend more time outside prison**

In December 2007, 1, 676 prisoners were wearing electronic monitoring devices and on 30 September 2, 035. In 2011, a quarter of the inmates in third level were provided with this system, 36% in the case of women. Evolution of this mechanism over the last years is showed in the table below:

Year	Currently in use (31.12.2011)	Electronic monitoring devices during the year	Total electronic monitoring devices since implementation of the programme
2007	1,676	1,656	4,868
2008	1,749	1,809	6,677
2009	1,912	1,985	8,662
2010	2,057	2,340	11,002
2011 Up to 30 September	2,035 (1)	2,045 (9 months)	13,047

- **As regard alternative measures and penalties, recent legislative reforms – particularly to fight gender-based violence and crimes against road safety – have recommended their use.** The table below shows the evolution of “community services orders” - which is the most important alternative measure - since last CPT visit in 2007.

Community Services Orders	
Total of sentences at the end of the period	
2007	10,916
2008	46,617
2009	161,008
2010	209,570
2011	156,559

Also, mechanisms to control compliance of community services orders have been increased as showed in the table below. The Recommendation of the Council of Europe, to consider prison as a “last” resort and not “the only” way to “penalized actions deviating from the rules”, has thus been followed.

Development of Community Sentence Orders	
Under Agreement and Prison Places	
2007	5,755
2011	28,765

It has also to be taken into account that nearly 52% of inmates who have to perform **community services orders are serving their sentences in road safety workshops and thus cannot be included in cell occupancy figures.**

Another element to be considered is that number of places to carry out community services orders work as **a permanent job offer** allowing **diverse inmates to cover the same place.**

- Finally, it should be noted that **importance given to these types of sentences and alternatives measures is reflected by the organizational and institutional support** that has make it possible the existence of the **General Subdirectorate for Sentences and Alternatives Measures**, responsible for their coordination and management.

In summary, following recommendation made by the CPT in past visits, the Spanish Government is making an extraordinary effort to refurbish and extend penitentiary infrastructure, and to better manage and employ available financial resources. Also, important initiatives have been adopted to promote prison sentences being served in open regime so that inmates can better achieve their social rehabilitation. The ultimate goal is to tackle the unavoidable limitation of Spanish prison places which, in a few and exceptional cases, could lead to prison overcrowding.

Paragraphs 47-50 (Ill-treatment allegations)

The CPT recommends that the Spanish authorities 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.

First, it should be pointed out that unequivocal condemnation and ban of ill-treatment is a key element of the Spanish Prison Policy, which is built on the respect of human rights. Zero tolerance is exercised by the Penitentiary Authorities. Along with the existing **controls within the penitentiary field** - such as, parole board judges, organs responsible for verifying compliance with legal provisions in sentence matters, organs of the criminal jurisdiction in a broad sense or the Ombudsman - a **strict supervision of the legality of penitentiary activity** is conducted by the inspectorate services of the Spanish Penitentiary Administration.

Systematic investigation of received allegations is undertaken, included those relating to a potential excessive use of force (torture and ill-treatment). Should any of these acts be confirmed, action by Penitentiary Administration is immediate. Measures to put an end to any act amounting to ill-treatment are taken as well as corresponding countermeasures and disciplinary measures against the offenders.

Further, the CPT recommends that specific measures be taken to ensure that prison staff at Puerto III Prison do not abuse their authority when performing their duties.

Prison staff performance, particularly at Puerto III Prison, **is and will continue to be rigorously supervised by Prison Inspectorate**. This supervision is carried out through the investigation of complaints submitted by inmates, relatives or associations and through the visits regularly conducted to prisons.

In any case, Prison Authority would like to thank the CPT for its recommendations and inform that **Prison Board of Puerto III Prison has been informed and reminded** that attention must be paid to actions that might amount to abuse of authority.

Further, it should also be noted that Prison Authority is **fully and particularly aware of staff conduct** that might be considered not only as criminal but just inappropriate from a professional point of view. In this regard, pioneering action of Central and Catalonian Penitentiary Administration is particularly significant. Both Administrations have recently **drawn up and approved a code of ethics for prison officers**, thus showing the unwavering commitment of Spanish Prison Administration to ensure proper conduct by prison staff and the existence of a code of ethics ruling their daily work and to which they are bound to. Moreover, content of these codes of ethics is taught to all new prison officers and to the rest of staff prison attending the continuous training courses. **Code of Ethics for Prison Officers of the General Secretariat for Prisons and the Independent Body for Prison Work and Vocational Training**, approved by Instruction 2/2011 of 21 February of the General Secretariat of Prisons (**Annex I**) is applied within the General State Administration. In the case of the Administrative Service of Catalonia, the 2011 **Code of Ethics for Sentence Enforcement Professionals** is in force (**Annex II**).

As regard the case mentioned in paragraph 49 i) of the CPT report, we would like to point out that:

From the data facilitated by the CPT in this paragraph, it appears that the prisoner is R.S.G. (Identification number: 9017116008). According to investigation conducted by Prison Inspectorate the following information can be provided:

The prisoner states that on 20 April 2011, after a duty officer accused him of possessing drugs, he was requested to do a number of push-ups. Next, he was taken to the infirmary where he was allegedly tied to a bed from 6.00 am to 10.45 am and a catheter was forcibly inserted into his penis in order to obtain a urine sample. As he was urinating blood a nurse removed the catheter. According to the inmate he was brought back to Module 15 where he was kicked and punched and fixated to a bed from 5.30 pm until 10 am the following morning. He says 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 with the active participation of health-care staff, and that a humiliating and potentially damaging forcibly intrusive procedure to obtain a urine sample was administered. This latter measure is a clear violation of medical ethics and may well amount to inhuman and degrading treatment.

Given this statements, it should be informed that based on the reports relating to incidents occurred on 16, 19, 20 and 21 April and a thoroughly examination of the medical record it is possible to state that from 16 April until 20 April, the inmate was examined four times in the infirmary due to benzodiazepine and THC overdose. Measures provided for in Article 72 of Prison Regulation, i.e. means of restrain and fixation were applied twice. The course of the events was the following:

- On 16 April, when the inmate was in Module 1 he fell down while being in the bathroom due to the effects of benzodiazepine and THC (as confirmed when he was examined in the infirmary) and he twisted his ankle.
- On 18 April, he was taken again to the infirmary at 01.45 pm due to signs of benzodiazepine and THC overdose. He stayed there until 08.30 pm.
- On 19 April he had a fight with another inmate, so at 12.30 am measures provided in Article 72 of Prison Regulation were applied (Means of restraint). At 06.05 pm he was taken to the infirmary due to asphyxia and signs of benzodiazepine and THC consumption. He was examined at 09.00 pm.
- On 20 April at 11.30 pm he was taken to the infirmary from his Module (Module 1) stating that he did not feel well and he could not sleep. He threatened to cut himself. Signs of some intoxicating agent consumption are evident. A urine control is carried out and benzodiazepine and THC are detected. He was taken to his Module at 00.15 am. On the way he threatened to hurt himself because he was not prescribed sleeping pills and tried to hit his head against the wall. It was decided to take him to an isolation cell and fix him so he could not hurt himself. He stayed there from 00.30 am to 8.30 am of 21 April.
- On 21 April he continued to be in the isolation cell and threatened to hurt himself. Fixation had to be carried out again from 01.25 pm to 07.15 pm.

There is no evidence at all to suggest that the urine sample was obtained by using a catheter. All treatments used by medical staff aimed at controlling his health conditions due to the overdose.

No fixation was applied while he was in the infirmary, only when he was in the isolation cell in order to protect his life and physical integrity due to his conduct and threats to hurt himself. The intoxication that lasted several days caused him anxiety, disorientation and mental confusion, which possibly prevented him from giving a coherent account of the facts.

Action conducted by prison staff abode by the current legislation. When means of restraint were used, the Judge for the Enforcement of Sentences was informed, in compliance with Article 72 of Penitentiary Regulation. Judge for the Enforcement of Sentences did not raise any objection to the measure.

With regard to the case mentioned in paragraph 49 ii of the CPT report, it should be pointed out that:

From the data gathered during the investigation, it appears that allegations of ill-treatment were made by prisoner J.M.F. (Identification number: 9515936648).

The prisoner states that during his/her transfer to Module 15, after a fight with another inmate, he/she was kicked and subjected to blows with a truncheon and that he/she was again beaten after he/she was placed in a cell. The next morning he/she was examined by a doctor and the following injuries were recorded: "circular haematoma of about 7-8 cm diameter on his/her right leg and other bruises on his/her left leg". The delegation's doctor 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.

According to the data on the injury report, the inmate's statement, the health record and the punishment measures decided on for the fight incident, it can be stated that:

- On 2 June 2011, prisoner J.M.F. had a fight with prisoner A.M.R in Module 2, injuring each other. Disciplinary proceedings were instituted and a penalty was imposed for major infringement in compliance with Article 108c of the Penitentiary Regulation approved by Royal Decree 1201/1981 of 8 May dealing with "aggression or serious coercion to other inmates". A punishment of 10 day on a solitary confinement cell was agreed upon. Medical care injuries report of that day, at 07.00 pm the prisoner states that he/she has had a fight and hit his/her head when he/she fell down. A 2 centimetre injury can be observed on his/her need and a suture clip is required. His/her right hand is aching and swollen and a splint is placed on.
- On 6 June, the inmate is examined again. The X-ray shows a fracture of the fifth metacarpal (typical fracture among boxers when punching).

The CPT's doctor noted the injuries caused during the fight and also previous injuries on his knee and hand; apart from that there was no evidence of ill-treatment against him/her during the time he/she was placed incommunicado. As the inmate explained during the medical examination, injuries were caused in a fight on 2 June and worsened due to previous injuries in the same limbs (hand and leg).

The investigation conducted found that, in both cases, performance by all persons involved complied with legal procedures. Further, the competent judicial authority carried out a statutory examination of these procedures and no objection was raised.

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

Regarding control techniques, **there are two training modules called "Self-Defence and Correct Use of Restraint Measures" and "Peaceful Solution of Conflicts" provided to all prison officers when they start working. Over the last 3 years 1,473 prison officers have received this training.**

Moreover, **every year specific courses on Self-defence and Correct Use of Restraint Measures are organized**. These courses include a specific protocol for prisons on security and self-defence. There is also a module on peaceful solutions of conflicts focused on managing hostile and violent behaviour complemented by another module on the legal framework of the use of restraint measures within the Penitentiary System. **Over the last three years 2,771 students have attended the course.**

With the aim of reducing the use of restraint measures by training prison officers in communications skills and conflicts resolution techniques, **specific courses on peaceful solutions of conflicts** are also offered. **Over the last three years 1,625 students have taken these specific courses.**

Regarding prison officers of Puerto III Prison, it should be noted that not only have they taken the different courses given on the use of restraint means (theoretical and practical), but also practical courses on regimental fixation using straps given by specialized staff from that prison. In fact, all prison officials of all shifts working in Module 15 - where the fixation cell is - have received this additional training.

Further, in April 2010, Puerto III Prison drew up a **Manual on Restraint System using high-security locks**, which is available to all the prison staff and was showed to the CPT delegation so it could examine it.

In relation to the CPT request to be informed on the ...for the transfer of inmates from Nanclares de la Oca prison to the new prison, we would like to inform that:

On 23 November 2011 the new prison was opened in Araba and 14 inmates carrying out maintenance work were transferred on the same day. The remaining 682 prisoners were transferred on 12 December 2011.

Paragraphs 51-52 (Conditions of detention in certain modules)

The CPT explains what Prison Regulation provide for regarding closed regimen (first degree), ordinary regimen (second degree) and open regimen (third degree) as well as power of the Prison Treatment Board on classification progression.

In order to answer the questions of the CPT, some comments on the Spanish prison system must be first made.

According to **Ley Orgánica 1/1979 of 26 September - General Prison Act** - custodial regime is a set of rules governing daily life in prisons in order to achieve an orderly and peaceful coexistence among inmates. This regimen must respect Article 25.2 of the Spanish Constitution, i.e.: “re-education and social reintegration” as well as what is established in the legislation: detention and custody of inmates and successful treatment of individuals sentenced and persons subject to judicial measures.

The **principle underlying** the penitentiary regime is the **respect for inmates** and for **the rights and legal interests** not affected by their sentence, without discrimination on grounds of race, political opinion, religious belief, or any other similar circumstance.

Under Article 72.1 of *Ley Orgánica 1/1979 of 26 September*, “**custodial sanctions shall be applied according to an individual classification assessment based on security categories, being parole the third one**”. It is a standardised, dynamic and flexible system that formalizes the decisions on classification and the regular assessment of the classification, type, placement and prisoners treatment programme. In this sense, **Instruction 9/2007 of 21 May of the Directorate-General for Prisons on prisoners classification and placement is the reference standard. It establishes the criteria for classification and placement of inmates. Classification categories are:**

A) **First security level.** This category corresponds to close regime in which security and control measures are more restrictive. After the issue of reports by the Head of Services and Technical Team, a reasoned proposal for a prisoner to be classified within first level is made by the Treatment Board. Objective facts are assessed based on Article 102.5 of Prison Regulation (type of crimes committed, acts endangering life or damaging physical integrity or sexual freedom, violent acts against property, belonging to crime or terrorist organizations, active participation in riots, protest strike, physical aggressions or threats, serious or very serious disciplinary offences, possession or smuggling of weapons into prison. Personality of the inmate is also assessed (dangerous nature, leadership, age, aggressiveness, psychiatric

history, etc.) as well as context circumstances (in group and alone, its importance in prison daily life). Judge responsible for the execution of sentences is informed of the decision reached by the Managing Board.

It should be noted that **classification within this regime is not considered a sanction**; its aim is the reintegration of inmates into the ordinary regime in the shortest time possible. It is characterised by its **exceptional nature** (last resort when other measures have failed), **temporary nature** (inmates are classified within this category as long as necessary to redirect their behaviour) and **subsidiarity** (decompensated serious psychiatric pathologies requiring specialized treatment have to be previously ruled out).

Variables to be taken into account to obtain another category are: a) participation in activities offered and included on the Individualised Treatment Programme, b) attitude of the inmate towards basic rules of respect and coexistence and c) no serious or very serious offences committed.

B) Second security level. This category corresponds to ordinary regimen. Inmates in this level do not pose a threat for coexistence in prison; however they cannot be released on temporary licence.

C) Third security level. This category corresponds to all types of open regime. Inmates eligible for this category do not pose a threat for the public so they can be released on temporary licence. The aim is to support reintegration of those whose behaviour showed that strict controls of the execution of their sentence are unnecessary. The aim is to allow these inmates to serve the last part of their sentences released on temporary licences. In accordance with Article 72.5 of *Ley Orgánica 1/1979* of 26 September, the following conditions have to be met to access third security level:

- **Security period** – If the sentence exceeds five years, it is necessary to serve half of the sentence before being granted third security level, unless the Judge responsible for the execution of sentences rules otherwise.
- **Discharge of civil liability:** When considering the eligibility of a prisoner for third security level or being moved to it, the following criteria are taken into consideration:
 - Prisoner's attitude to make restitution, repair damage and provide compensation for material and non-material damages
 - Prisoner's personal and financial circumstances to fulfil civil responsibilities
 - Guarantee assuring fulfilment of civil liability
 - Estimate of enrichment achieved by the prisoner through the crime
 - Nature of damage and prejudices caused by the crime

A straightforward classification in third security level is possible if the individual is suited to enter this category. Therefore a person can be classified within a category, without necessarily being classified in the previous ones, but in the case of parole. Possibility of second offence is assessed through factors such as: voluntary access [*sic*], less than 5 year sentences, if the person is a first time offender, how long the crime has been committed, signs of social adaptation, low “prisonization”, pro-social family support, taking responsibility as regards the crime, being a responsible person, addiction have been treated, etc. There are other factors for being classified into third security level: persons with serious and incurable diseases (Article 104.4 of Prison Regulation), placement in Day-Release Units run by prisons, (Article 165 of Prison Regulation), placement in drug rehabilitation centres (Article 182 of Prison Regulation).

Further, Article 100.2 of Prison Regulation provides for the **prison term being more flexible and individualised**. There exists the possibility to serve a sentence that combines characteristics of each category. This option is individually studied and must be based on a **concrete treatment programme**.

Should an inmate refuse an **individualised treatment programme**, prison staff will be responsible for monitoring his/her behaviour in order to carry out his/her evolution assessment (Article 112.4 of Prison Regulation).

In all case, **classifications are not permanent** since categories are **reviewed** every 6 months, and every 3 in the case of First Security Level, by the Treatment Board. **New classification** is based on treatment evolution; according to this, proposals are made to transfer inmates to the corresponding prison, unit within the same prison establishment or to another unit with a different life regime.

An inmate has the **right to change** category if a successful “treatment progress” is observed. Therefore, regime, always linked to categories, is also a right and no convict can be granted with a less favourable or more restrictive regime.

Change of category depends on the **positive evolution** of those factors directly linked to the crime committed which, in turn, can be detected in the inmate’s behaviour. This must result in greater trust placed in the inmate and more serious responsibilities implying more leeway.

Similarly, there exists the possibility of **change to a lower category** when negative progress of inmates regarding social integration and behaviour is noticed.

As previously explained, classification determines the various regimes:

Closed regime: Regime in which preventive detention prisoners and prisoners in First Security Level are placed due to their extreme dangerous nature or no adaptation to the other regimes

Ordinary regime: Regimen for prisoners within Second Security Level, convicts not yet classified, detainees and prisoners

Open regime: Regime for prisoners classified within Third Security Level that can be granted temporary licences.

The previous comments have presented the general organisation established by the legislation in force.

As regards the more specific comments required by the CPT, it must be stated that the classification of inmates into the first security level implies their placement in “closed regime” units or special units (where high security and more restrictive standards are applied). However, **the application of the first level is exceptional**.

In fact, **official statistics reflect the exceptionality of such a measure. In December 2010, 1.76% of the inmate population was classified into the first level**. In this respect, the assessment made by the MNPT – main body responsible for supervising liberty deprivation in Spain – is of the highest importance. Such assessment is carried out in the form of a report drawn up as a result of the visits conducted in 2011. This report presents the specificities of the closed regime and adds:⁴

⁴ Paragraph 362 of the report of the MNPT relating to the visits carries out in 2010.

“Many of the prisons visited had a specific unit for this kind of inmates, where voluntary treatment activities are carried out in order to allow inmates to access some specific therapies while placed in solitary confinement and to begin common activities – according to their assessment – joining small groups that observe minimum rules of coexistence and with a view at moving forward to a next level of classification”.

All inmates have the right to participate in **treatment programmes organised by the Prison Administration to facilitate their improvement in classification and personal growth**, to improve their social and labour abilities and skills, as well as to overcome behavioural or exclusion factors that were the underlying cause for the commission of their crimes. **The Administration is obliged to design targeted treatment programmes for each inmate, involving him/her in its planning and implementation.**

The treatment objectives are included and presented in a continuous and dynamic individualised plan called **Individualised Treatment Programme (in Spanish, PIT)**. **Treatment proposals are drawn up when the inmates' initial classification is carried out and they are periodically revised** together with classification every six months as a maximum. The plan is prepared on the basis of a global assessment of the detainees' personality, including their criminal nature and the elaboration of regular evolution outcomes that shall determine the inmates' classification and internal regime. In this way, each **Individualised Treatment Programme assigns to each inmate two levels of activities:**

- **Priority activities:** aimed at tackling the most serious inmates' weaknesses. Intervention addresses either those factors directly related to the criminal behaviour (drug addicts, sexual offenders, etc.), or basic educational gaps (illiteracy, lack of labour-oriented education, etc.).
- **Complementary activities:** not directly related to criminal aetiology or with basic educational gaps. They complement priority activities providing inmates with a better life quality, as well as job, educational or cultural perspectives.

However, **the Individualised Treatment Programme is applied on a voluntary basis**, except when inmates lack basic education. Their participation in PIT activities shall be assessed and promoted. Assistance, effort and performance of inmates shall be taken into account.

Apart from this plan, **there are also other specific Programmes run by the Administration**. They aim at promoting a positive outcome of people placed in prison centres, where special rules are applied due to social, criminal or penitentiary conditions. This allows the creation of a culture that promotes actions to correct psychosocial factors underlying criminal behaviours of inmates.

These programmes are **assigned on the basis of the inmates' global assessment**, their personalities – including their criminal dimension – and periodical analysis aimed at determining the inmates' evolution. Taking into account these factors, a continuous and dynamic individualised treatment is drawn up. Specific programmes foresee the following:

- Objectives of the intervention
- Target prison population
- Organisation of therapy units, together with activities and appropriate techniques
- Necessary resources
- Proceedings to evaluate outputs and results.

The **implementation of such programmes relies on multidisciplinary technical teams**, depending on the area of expertise of each professional. Moreover, the staff is previously and specifically trained. In some cases, the resort to external institutions, such as associations or university experts, is also possible.

The efficacy and outcomes of specific programmes, as well as the inmates' progress are regularly assessed by the Prison Administration, usually in collaboration with universities and other appropriate institutions.

Currently the on-going specific intervention programmes are the following:⁵

- ❖ Intervention programme for sexual offenders
- ❖ Intervention programme for persons with disabilities
- ❖ Intervention programme for drug addicts
- ❖ Intervention programme for persons with mental illnesses
- ❖ Intervention programme for young people
- ❖ Intervention programme with mothers
- ❖ Intervention programme with foreigners
- ❖ Programme for the prevention of suicide
- ❖ Programme of assisted therapy with animals
- ❖ Programme about gender violence
- ❖ “Módulos de Respeto”.

Apart from these programmes, also **sport, leisure and cultural programmes** are available.

Moreover, the recent introduction of the **Intervention programme for detainees placed in “closed regime”** should be highlighted. The recent amendment of Prison Regulation through Royal Decree 419/2011, of 25 March, establishes the obligation to design a specific intervention programme ensuring personalised assistance to inmates in closed regime. In this perspective, **Instruction 17/2011, of 8 November, of the Director-General for Territory Coordination and Open Regime, relating to the intervention protocol and rules for closed regime represents the reference operative document (enclosed as Annex III)**.

As stated before, the condition of inmates in closed regime shall be considered as **temporary**, provided that this regime is more restrictive than the general one applied to common inmates. In closed regime inmates serve their sentence in single-cells and common activities are restricted; for these reasons, it shall be considered as an exceptional regime and its duration shall not exceed the time strictly needed to correct inmates' behaviour.

The exceptional and temporary nature of closed regime obliges Prison Institutions to design intervention models that are consistent with regime and security measures and aimed at achieving the inmates' adaptation with a normal life regime. To this end, the main objective of the closed regime programme is to achieve the adaptation and integration of inmates to the ordinary regime, in the context of a normalised coexistence. The goal is to develop strategies that allow inmates to conclude their stay in closed regime as soon as possible. In particular, efforts focus on avoiding inmates' “social exclusion” and isolation.

⁵ All these programmes are available on the website of the General Secretariat for Prisons: <http://www.institucionpenitenciaria.es>

The broad outlines to implement the framework treatment programme for inmates in closed regime shall be specified and adapted in each prison centre, considering its special characteristics (space availability, human and material resources, etc.). The most appropriate procedures shall also be designed. The aim is to work together with inmates in order to make it possible for them to follow a more orderly and healthy way of life and to access ordinary regime. Specific objectives aim at:

- Achieving the inmates' involvement in the programmes
- Promoting self-esteem improvement
- Minimising feelings of isolation
- Developing fellowship and mutual cooperation in performing common tasks
- Tackling situations of social and family upheaval that may cause anxiety
- Instilling healthy habits
- Enhancing the learning of adapted behaviour
- Developing a sense of respect for rules
- Reinforcing social abilities
- Training for conflict resolution
- Teaching pro-social values and behaviour that will facilitate the interaction with other people
- Teaching how to control negative states of mind (anger, rage, aggressiveness) that may lead to violent behaviour
- Teaching how to recognise potentially dangerous situations, proposing alternative solutions to aggression or any other dysfunctional behaviour
- Informing, awareness-raising and redirecting – if needed – towards other programmes for drug addicts.

There are areas of educational, sanitary, socio-familiar, therapeutic, job, sport, leisure, cultural and employment intervention. Within the therapeutic area, the main strategies are: control of anxiety and aggressiveness, detoxification from drugs, health and values education, emotional awareness, conflict resolution and training of social abilities. The working method focuses on individual sessions aimed at establishing a link with inmates; subsequently, the treatment is developed in groups.

The **implementation of the programme shall be supervised by a multidisciplinary technical team** composed by a psychologist, a social worker, a jurist, an educator, a doctor, a teacher, a sociologist, a pedagogue, sport and vocational specialists, a psychiatrist as well as different surveillance officers.

Considering that this programme is developed in units where special security measures apply, the officers in charge of the surveillance play a fundamental role in facilitating and participating in the activities, as well as ensuring security and community life in prison. They are directly and permanently in contact with inmates; therefore, they are the most appropriate professionals to carry out the evaluation by directly observing the inmates' behaviour.

Finally, the technical team shall conduct an evaluation, taking into account factors, such as number and type of disciplinary infractions, sanctions, number of activities followed at the beginning and at the end of the programme, etc. The aim is to assess the **positive evolution of inmates before and after participating in the programme**.

As regards the abovementioned comments, the CPT considers that detainees placed in units for hostile inmates did not have the same opportunities (activities, context, etc.) as inmates of other units. Moreover, the CPT highlights that many inmates considered their classification as a punitive measure. As a result, the CPT invites the Spanish authorities to make comments about the detention conditions depending on the regime applied to inmates.

Apart from the aforementioned consideration about the method of classification within the Spanish prison system, we once again reject the statement that inmates are separated depending on their level of aggressiveness. On the contrary, the basis is Article 16 of the *Ley Orgánica 1/1979*, of 26 September, which states:

“Whatever the centre where inmates are placed, an immediate and complete separation shall be carried out on the basis of sex, emotional state, age, criminal records, physical and mental conditions, as well as – in the case of convicted persons – the requirements of their treatment regime.

By virtue thereof:

- a) Men and women shall be separated, except in those exceptional cases to be determined by regulation
- b) Detainees and inmates shall be separated from convicts and – in both cases – first time offenders from persistent offenders
- c) Young people – either detainees, prisoners or convicts – shall be separated from adults under the conditions that shall be established by regulation
- d) Ill persons or physically or mentally disabled shall be separated from those who are able to follow the normal regime established in the penitentiary centre
- e) Detainees and prisoners due to malicious crimes shall be kept separated from those having committed unintentional offences.”

In order to implement the abovementioned provisions, Article 99 of the Prison Regulation establishes that “within prisons, inmates shall be separated on the basis of – primarily – sex, age and criminal records and – in the case of convicts – treatment requirements.”

In short, the Spanish legislation establishes a separation criterion on the basis of persistent or first offences, ignoring the aggressiveness level of inmates. The idea underlying the separation criterion is to avoid any possible criminal contamination between more “prisonised” groups and common inmates. Furthermore, such criteria are fully consistent with the provisions of the Standard Minimum Rules for the Treatment of Prisoners, adopted by the First Congress of the United Nations on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955, and approved by the Economic and Social Committee by its resolutions 663C (XXIV), of 31 July of 1957 and 2076 (LXII) of 13 May 1977. In particular, Rule nº 8, under the title “Separation of categories”, establishes that “*different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. (...)*”.

Notwithstanding the above, with a view at achieving a full and permanent adaptation of all inmates to the ordinary regime, as well as a positive coexistence allowing inmates to lead an ordered community prison life and participate in the activities foreseen by the treatment, the so-called “Módulos de Respeto” are gradually being established. Their aim and functioning shall be explained in the answer to paragraph 57 of this report.

To sum up, the existence of different level of progressive adaptation to the ordinary regime – particularly through the “Módulos de Respeto” – avoids units for hostile inmates, which was never promoted by the Prison Administration.

Paragraph 53 (Purposeful activities in penitentiary centres)

The CPT refers to the situation of inmates in ordinary regime in some penitentiary centres. In particular, reference is made to inmates of the Madrid IV Prison. The CPT highlights that in this centre 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, disabled inmates, etc.). That said, the delegation received many complaints from prisoners in Module 5 (which – according to the CPT - accommodated “conflictual prisoners”) that they were not offered any purposeful activities; some alleged that their applications to attend educational courses had been denied.

The CPT also states that at Puerto III Prison several vocational courses and programmes had been implemented. However, few inmates were employed in the workshops.

As regards the Nanclares de la Oca Prison, the CPT indicates that efforts to increase the number of prisoners involved in purposeful activities were evident.

As a result, the CPT recommends that the Spanish authorities pursue their efforts to provide prisoners with a range of purposeful activities.

Over the last years **considerable efforts have been made to strengthen educational, vocational, cultural and therapeutic programmes for inmates, aimed at increasing their social reintegration opportunities and preparing them to lead a lawful life.** In particular, it is worth briefly presenting the general lines of the above-mentioned **Intervention Specific Programmes that have been implemented during the last years:**

1) **Programme on gender-related violence:** intervention for offenders. This intervention programmes address inmates having committed gender-related crimes in a family context, i.e. against their partner or ex partner. It is a therapeutic programme addressing fundamental aspects, such as responsibility, empathy with victims and change of stereotypes and beliefs from a gender-based perspective. Its average duration is one year. Its method follows the group therapy format.

The programme stems from a pilot treatment established in 8 prisons in 2001, in which 61 inmates participated. Their results were encouraging. In 2004 the General Secretariat for Prisons designed a specific programme based on the pilot programme.⁶ Its main characteristics are the **psycho-therapeutic treatment based on a group intervention**, and the requirements and intensity of the treatment. Its approximate duration is one year (45 sessions).

In 2009, the programme was revised and improved. A more complete procedure was established on the basis of the experience gained over the time and the intervention activities carried out at the international level. The programme was titled “Gender-Based Violence. Intervention Programme for Aggressors” and was published in 2010. Its **main objective** continues to be the reduction of the chance that persons convicted for gender-related crimes re-offend and commit gender violence acts. The treatment programme is **structured around a set of progressive modules** aimed at modifying and improving factors related to gender violence. A treatment evaluation is conducted considering those factors and a comparison is made between the results achieved by inmates in a set of psychological tests before and after the treatment. The results show a statistically significant improvement of all factors examined.

⁶ This programme has been published on the Series of Penitentiary Documents (Documentos Penitenciarios) nº 2 with the title “Treatment programme in prison for family aggressors”. It is also available on www.institucionpenitenciaria.es

2) **Sexual aggression control programme.** According to Article 116 of the Prison Regulation, this programme addresses inmates having committed sexual offences, whose victims were adult women or minors. It takes place in group sessions that shall be conducted by a psychologist, since the programme has a clear psycho-therapeutic approach. Its average duration is two years.

The intervention programme started in 1988 and was implemented in few centres. In 2005 the Prison Administration updated the intervention procedure and promoted its implementation.

The implementation of this programme includes two clearly different parts: a detailed evaluation of each inmate and a psychosocial intervention in group sessions. The intervention foresees different priority actions:

- **Increasing inmates' awareness** as regards the significance of their criminal actions
- **Increasing offenders' empathy towards victims** and modifying their cognitive distortions that might ease a future victimization
- Helping offenders restructure their interpretation of impulses and develop strategies to **reduce the chances of re-offending**
- Developing **abilities to face their problems and control their own impulses**
- **Modifying lifestyles** with a view at promoting a continued withdrawal from crime. It is complemented by an appropriate **sexual education**.

The programme methodology is based on group sessions, with a strong therapeutic focus. This is why it must be conducted by psychologists. The programme includes one or two weekly sessions of more than three hours each. Its duration is **approximately two years**. Inmates also receive **their own manual** containing a review of all concepts examined during the therapeutic sessions, as well as a set of exercises or **complementary activities**. Finally, the programme is submitted to an evaluation in collaboration with external experts.⁷

3) **Intervention programme for foreigner inmates.** The basic principle is that foreigner inmates have the same rights as Spanish citizens, according to the rules established by legislation. Moreover, they shall enjoy the same opportunities in order to access the labour market, educational programmes and prison treatments. This programme is based on these basic criteria and was first implemented in 2005.

The **Framework Intervention Programme for Foreigner Inmates** includes the different recommendations made by the Council of Europe in this field and is meant to be a comprehensive intervention approach towards this group according to the following **guiding principles**:

- **Reducing isolation:** for foreigner inmates resulting from unknown culture, lack of knowledge of the language, etc. The aim is to ease the communication between these inmates and other people of the same nationality, language or religion, as well as the access to documents published in their language, sometimes with the assistance of consular services and appropriate private organisations

⁷ The Manual for Therapists has been published on the Series of Penitentiary Documents (Documentos Penitenciarios) nº 3 with the title “Sexual aggression control: Intervention programme in prisons. A treatment programme for sexual offenders in prison”. It is available on www.institucionpenitenciaria.es

- **Overcoming language difficulties:** teaching Spanish allows inmates' personal development and their integration within a democratic society. This also facilitates an ordered community life in prison
- **Providing a comprehensive education:** the educational weaknesses of many foreigner inmates (school and vocational education, key cognitive skills to facilitate their social adaptation, etc.) are tackled by carrying out training activities and organising purposeful workshops
- **Providing legal information and democratic values:** upon imprisonment, foreigner inmates are informed in a language they understand of the sentence they shall serve, applications for review, rights and duties, as well as of the rules and activities of the penitentiary centre. They also have the right to contact the consular authorities of their country.
- **Offering open intercultural activities:** With a view at promoting cultural, religious and customs diversity, group activities with between 10 and 15 inmates of different nationalities are carried out. Out of all the participants in these groups, 30% are Spanish. Activities are held in the form of conferences, round tables, film forums, theatre, music and other cultural ways of expression that may help approach the peculiarities of other nationalities. The aim of these activities is to foster values such as tolerance, respect and defence of the rights and liberties of all citizens. **These activities are not meant to impose certain values instead of others; the aim is to promote universal values.**

In many cases, foreigner inmates do not have an appropriate social network to enjoy their ordinary prison leaves or in other cases inmates do offer enough guarantees as regards their chance to get back to the penitentiary centre after the leave and thus, they are given the opportunity to enjoy organised leaves.

This intervention programme presents a twofold dimension that takes into account both empirical and legislative factors. On the one hand, there are **General Programmes**, addressed to foreigner inmates that speak Spanish and thus able to participate in other educational programmes established in the centres (all prisons offer training and educational opportunities). On the other hand, there are **Specific Programmes** for inmates that do not speak Spanish. Their aim is to enable those inmates to achieve a proper personal development and fully integrate within a democratic society, facilitating the creation of an ordered community life in prison.

The programme is structured on three main intervention areas: the educational one (formal school system, languages, vocational training or health education); the multicultural area (legal information, socio-cultural characteristics of our country, intercultural activities) and, finally, education in values and cognitive skills.

The intervention programme for foreigner inmates has been gradually established in the penitentiary centres, once the multidisciplinary technical teams – composed by psychologists, jurists, pedagogists, sociologists, educators, teachers, social workers and surveillance officials - have received the corresponding training. Each centre is responsible for designing, implementing and evaluating these programmes, within the criteria set out by the framework programme.⁸

⁸ The Framework Educational Intervention for Foreigner Inmates is available in the series of the Review Penitentiary Documents (Documentos Penitenciarios) nº 4 and on www.institucionpenitenciaria.es

4) **Intervention programmes for people with physical, sensory and intellectual disabilities.** At present, **approximately 1% of the prison population has some kind of disability.** This programme aims at facing this situation on the basis of the following aspects: early detection, placement of inmates in units or centres without architectonic barriers and processing of official disability certificates. In the event of inmates with intellectual deficit the intervention aims at training basic abilities that help increase their autonomy.

This programme – in place since 2005 – is implemented in collaboration with the Spanish Confederation of Organisations for the Assistance to People with Intellectual Disabilities (FEAPS, according to the Spanish acronym). It is conceived as a framework programme that has to be adapted to each concrete penitentiary centre. Its **main goal is to get to know inmates' needs with a view at promoting living conditions that may ease their social integration.** Moreover, it aims at organising therapeutic actions that may help inmates develop personal and interpersonal skills and abilities.

The programme is **structured on three stages:** detection of the case, evaluation, and intervention to reinforce weaknesses and respond to therapeutic needs. The personal intervention area aims at developing and consolidating personal autonomy habits; the psychosocial and relational area promotes social skills; the family area is conceived to facilitate communication and family relations; the educational area aims at providing inmates with basic knowledge; the labour area includes vocational programmes. Finally, there are also support measures (granting of disability certificates), as well as health intervention – if needed.

The programme has an integral approach and is carried out by a specially trained multidisciplinary team composed by: psychologist, pedagogist, jurist, social worker, educator, vocational trainer and surveillance officer.⁹

5) **Intervention Programme for inmates in closed prison regime.** As already stated in the answer to the comments made in paragraphs 51-52, the closed prison regime is exceptional and can also respond to situations where the security of other inmates or officers might be compromised. As for the rest of programmes, this one shall present a positive approach, including different intervention areas: education, training, culture, leisure and sport, as well as therapy, aiming at allowing inmates' reintegration in the ordinary regime. Since it was established in 2006, a significant effort has been made to improve the architectonic structure of these centres with a view at allowing the creation of a more normalised environment and a positive development of the activities planned. Further comments about this programme can be found in the answer to paragraphs 65 and 67.

6) **Intervention programme for young people.** In the Prison System inmates under 21, and exceptionally under 25, are considered as “young” inmates. The prison legislation regards age as a separation criterion within penitentiary centres given the special characteristics and specific needs of the inmates under 21 (or 25).

The programme is meant to deal with **criminal activity among young people between 16 and 22 years old** (which is five or six times higher than in adult population). It **includes an intensive educational intervention** aimed at preventing criminal careers and achieving the inmates' social integration once they have served sentence.

⁹ The prison intervention for inmates with intellectual disability is available in the series of the Review Penitentiary Documents (Documentos Penitenciarios) nº 8 and on www.institucionpenitenciaria.es

The younger inmates are and the sooner they start their criminal activity less efficient is the therapeutic intervention programmes with this age group. This is why an intensive and integral intervention planning is needed in such cases.

This kind of programmes for young inmates has been carried out for decades. In 2007 a multidisciplinary programme for young inmates under 25 was organised. This group represents approximately 14% of the prison population.

The programme is based on the **principle of intensive educational activity**. Professionals working in young offenders centres focus their activities on a comprehensive training for inmates that specially promotes contact between prisoners and their social environment. The **objective is twofold**: on the one hand, offering inmates the opportunity to learn fundamental thinking skills in order to better adapt both at the personal and social level; on the other hand, improving interpersonal abilities, training and preparing them to seek a job. As a result, the programme addresses the following aspects: academic and professional training, leisure, culture and sport, health issues, as well as social and family matters. Taking into account the principles of intense and comprehensive approach, along with the weaknesses and characteristics of young inmates, the **main action areas of the programme** are the following:

- Academic education
- Sport
- Professional field
- Culture
- Health issues
- Leisure and spare time
- Social and family issues
- Preparation for life in society

In addition, a more specific programme called "**Programme for Pro-social Thinking – short version for young people**" is being carried out. It is a specific programme that includes cognitive strategies through which inmates can acquire abilities, behaviours and values that may help them lead a more socially adapted life. It is a cognitive intervention organised in 12 sessions and based on a direct training of abilities, behaviours and values. The programme allows young inmates to acquire skills to avoid criminal acts. All programme modules are separately developed and comprise the following abilities: self-control, metacognition (self-critical thinking and reflexion), social skills, personal problems solving skills, creative or lateral thinking, critical reasoning, adoption of social perspective, feelings and values management, etc. The general part of the programme is taught by a multidisciplinary team made of psychologists, jurists, pedagogists, sociologists, educators, teachers, surveillance officers, social workers, as well as experts in the field of sport and vocational training. At the end of the programme, an external evaluation is conducted.

7) **Treatment programme of pet therapy (TACA, in Spanish)**. This programme has proven its usefulness as complementary treatment for inmates with affection and self-esteem related problems (unstable personality characterised by impulsiveness, low self-esteem, scarce empathy and insufficient personal care). The care of animals provides more awareness of oneself and of others. Inmates can more easily integrate in the dynamic of the centres, significantly improving their personal care.

The programme was launched in 2007 and its main objectives are: strengthening of communication and personal relationship skills, reduction of anxiety and depression, promotion of responsibility and adaptation to the psychiatric treatment.

The selection of inmates is made by the technical and multidisciplinary team (composed by psychologists, educators, civil servants and instructors), that shall be responsible for carrying out the programme activities. Such selection is made on the basis of a psychosocial evaluation of inmates that includes an individualised treatment plan indicating objectives to be achieved and adapted to their own characteristics.

The programme is organised in different stages: initial evaluation, training for inmates about animal care, periodical assessment, psychological treatment and final evaluation.

8) **Programme of conflict resolution**. It addresses inmates with problems in living together with others inmates. The purpose is to learn how to resolve conflicts peacefully, with the support of a mediator.

Coexistence in prison provokes a high number of interpersonal conflicts. Only few of them result in disciplinary sanctions. However, the application of disciplinary measures cannot by itself resolve conflicts and thus problems may last. Most conflicts are insignificant, but they need to be resolved before getting more serious.

This programme, called “Permanent Service for Dialogue in Conflict Resolution” was launched in 2007. It consists of three stages: explanation and mediation offer with each inmate separately, meeting and dialogue with inmates to find an agreement, and finally a commitment.

In short, treatment programmes in force and inmates participating in them are – in average per year:

TREATMENT	PROGRAMMES	IN PRISONS	(update: 30.12.2011)
Gender violence	35 centres	968 inmates per year	
Sexual offenders	32 centres	382 inmates per year	
Foreigners	16 centres	736 average per year	
Inmates with disabilities	38 centres	550 average per year	
Young inmates	18 centres	1,180 average per year	
Closed regime	21 centres	568 inmates per year	
Conflict resolution through dialogue	14 centres	1,285 inmates per year	
Pet therapy	16 centres	338 average per year	
“Módulos de Respeto”	67 centres	15,726 inmates per year	
Suicide prevention	67 centres	2,202 inmates per year	
Therapy units	34 centres	3,051 inmates per year	
Ser mujer.es	8 centres	159 inmates per year	

Furthermore, **education is a priority for Prison Administration**. All penitentiary centres have a school. In the academic year 2012-2011, **18,807 inmates studied in their corresponding education levels**, from literacy to university studies, i.e. 33.8% of the prison population, without considering inmates in “open regime”.

Concerning cultural activities, the following table shows the average data about inmates' participation in each programme in 2011:

Area	Subprogramme	Activity average per month	Inmates' participation average per month
Professional	Courses/Workshops	595	17,843
	Job Training		
	Disseminating Culture	507	32,096
Cultural	Training and cultural motivation	111	1,920
	Library	67	13,178
	Leisure Sport	424	28,341
Sport	Competitive Sport	261	5,983
	Sport Training and motivation	264	5,379

Finally, considering that one of the major weaknesses of the prison population is the lack of **appropriate professional skills**, along with work habits and job experience (approximately 40 % of the prison population show this kind of weaknesses), Prison Administration has drawn a strategic line of action for the Independent Body for Prison Work foreseeing the opening of new workshops and activities in the field of professional and academic training. **As a result, accompanying actions to access the labour mark have been put in place. In 2011, 3,900 inmates participated in them. In the same year (2011), the average number of inmates-workers was 12,640.**

In short, we are grateful to the CPT for the recommendations aimed at maintaining efforts to offer a wide range of purposeful activities for inmates in penitentiary centres. Such efforts are already being made by the Prison Administration.

Paragraph 54 (Material conditions in penitentiary centres)

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.

The Madrid IV Prison has ten modules and each one hosts 75 cells. There are 16 cells in each module and a total of 170 cells in the prison measuring a little bit less than usual and requiring a small reform in order to be fit for two inmates. **As a result, the appropriate orders were given to ensure that those cells that cannot be reformed to host two inmates are classified as single-occupancy cells.**

As regards the **sanitary facilities of the Madrid IV Prison**, most of these annexes are portioned to the ceiling, except the entry and a small wall of medium high that are equipped with curtains.

Concerning **heating and access to light** in the cells of module 15 of the above-mentioned centre, heating equipments now function normally and no claims were addressed to the Administration concerning this issue. The access to light is only limited by the fact that cells are located at the ground floor and light comes from the inner courtyard. No other element prevents light from accessing the cells.

Paragraph 57 (“Módulos de respeto”)

The CPT would appreciate the comments of the Spanish authorities on the operation of the “modulos de respeto”. In particular, the CPT states that it supports the objectives of such modules, aimed at promoting a higher sense of responsibilities among inmates and improving the relationship between them and the prison staff. However, it pointed out that there appeared to be a disproportionate emphasis on cleaning activities.

In mid 2010 there were 119 “modulos de respeto” (hereinafter, MdRs) in 62 prisons. The main characteristic of these modules is that the signing of an “agreement” by inmates is needed to access them. Through this agreement inmates commit to maintaining a respectful attitude towards officers, prison mates and a law-abiding behaviour as regards the rules of the centre. In this agreement, they also express their commitment to participate in activities that may be available, something that goes beyond the basic rules governing the prison.

The objective of this system is that inmates consider the module and its rules as “their own choice” and not as “something imposed”. The aim is to establish a positive atmosphere for living together and a sense of respect among all residents. In this system, inmates participate in the life, activities and decisions of the module, through the existence of working groups and inmates’ committees.

The MdRs were first conceived and established in the Mansilla de las Mulas Prison (León) in 2001 as an organisation system to meet therapeutic, educational and relational goals within the prison. It includes intervention programmes along with means, methods, structures, action guidelines, as well as clear and systematic assessments.

The MdR represents a **separation unit within a penitentiary centre where inmates enter on a voluntary basis**. It implies the acceptance of the module’s rules as regards: **personal area** (personal care, appearance, clothes and cell cleaning); **environment care area** (use and maintenance of common spaces); **interpersonal relationships area** (interaction with other inmates, officers, therapists and external staff); and **the activities area** (activities in which inmates take part on the basis of their Individualised Treatment Programme).

Access of inmates in a MdR is voluntary and implies the commitment with the rules governing the above-mentioned area in the unit. **The concrete objective of MdRs is to create a positive atmosphere for living together similar to any other normalised social group as regards rules, values, habits and interaction forms. Such a system is characterized by:**

- Existence of non written rules and habits that are abided by and known by everyone; their infringement results in social sanctions;
- Possibility of interchange of authority roles;
- Existence of an informal organisation: relations based on friendship, rejection, leadership, etc.

The system is based on **three main pillars: a) a group organisation system (task groups); b) an immediate assessment proceedings; and c) a structure for inmates’ participation (Committees).**

All inmates of MdRs are organised in **task groups**. Each group is in charge of a weekly task concerning the functioning and maintenance of one area of the module. **Asymmetries in the distribution of the workload** concerning the areas assigned (dining room, living room, etc.) **are a key element of the MdR system**. Based on the evaluation their members, the groups can choose their weekly task. As a result, each individual assessment determines the tasks to be carried out by the group as a whole. Moreover, the group shall be responsible for cleaning and tidying-up its area all the day long, thus increasing the asymmetries of the workload.

All inmates shall participate in maintaining and taking care of the different parts of their module, as well as in daily activities of the module. To this end, standing groups are organised for each part of the module, for instance living room, dining room, gallery, courtyard, glasses, professional workshops, etc. Each group shall ensure that all areas are perfectly clean and ordered all the day long.

Each group is composed by a previously fixed number of inmates. One of them shall act as leader. Groups are assigned to a concrete area each week depending on the above-mentioned individual assessment carried out during the previous week. The aim is to gain more personal responsibility, provided that the individual behaviour has an impact on the group. Every week the group having obtained the best results shall have the opportunity to choose the tasks the first.

Furthermore, there are specific rules for the proper use of each part of the module, such as: it is forbidden to throw papers on the floor; inmates must use garbage cans and ashtrays, etc. Simultaneously, the members of the group shall be entitled to require all inmates of the module to respect the rules of use of their own area. This is both an important and confrontational element since it implies that all inmates accept that their mates are entitled – in a socially acceptable way – to require the compliance with the conduct rules established within their responsibility area. Therefore the idea is to achieve collective solidarity.

The group leaders shall share out the work in a balanced way, solve internal problems – if needed – and offer guidance and assistance to inmates that enter the group for the first time. Moreover, as representatives of the group, they shall attend weekly leaders' meetings.

Although it must be reminded that MdRs are no self-management system and in no way imply that inmates are delegated to perform leading tasks – assigned to the experts that are in charge of the MdRs - the participation and involvement of inmates represent a key element. This is why the establishment of a participative structure is so important. Such structure enables inmates to take part in the organisation of the module. It also allows inmates to get involved and take on responsibilities in carrying out tasks, and promote dialogue among them. In particular, the existence of the following committees can be stressed:

- **Daily meetings or general assembly:** every day, after breakfast, a brief and practical meeting of all inmates of the module and at least an expert from the Technical Team is held. Its aim is to check if everything works correctly, disseminate some recommendations, remind rules that are not being duly fulfilled, share news, information, etc. The purpose of the meeting is to create a custom or ritual known by everybody and of compulsory attendance. This meeting also provides experts with a quick and comprehensive understanding of the module's functioning and allows them to proposed immediate ideas, guidelines or criteria. Decisions are taken by show of hands and, once adopted, they becomes rules of the module.
- **Coexistence Committee:** its aim is to mediate among inmates in the event of personal conflicts. Its members are chosen by inmates themselves. If the Committee fails in its pacification task, professionals of the centre shall intervene. Experts shall be informed of all actions taken by the Committee, in order to control the functioning of the unit.

- **Reception Committee:** it is responsible for receiving inmates that first access the module and facilitating their integration. Access to the MdRs takes place after the interview between inmates and professionals, and once conditions and peculiarities of the module's life have been explained and inmates have committed to behave according to the rules of the module.
- **Leaders' Assembly:** it is the highest body for inmates' participation. Leaders of the tasks groups and those inmates in charge of some specific activity (language, ecology and recycling, painting workshops, etc.) participate in one weekly meeting. Other inmates are also allowed to attend it in order to achieve a greater participation but professionals do not.

Apart from the above-mentioned committees, there are **other commissions with similar characteristics** to the ones of committees in ordinary prison modules, such as: sport committees, cultural and party commissions.

The key element of the system is the assessment of inmates that has an impact on the prison population. The aim is to create a positive atmosphere of group pressure on each inmate, promoting values such as **solidarity, responsibility and mutual respect**. Evaluation is a complex system since it tries to reflect the functioning of the outside society. The aim is that inmates avoid sanctions by adopting a rule-abiding conduct. No extraordinary behaviour is required; inmates only have to comply with what is expected from them. **The objective is not to reprimand inmates for their punishable actions, but to promote positive behaviour.**

Therefore, assessment is carried out considering the negative effects resulting from the non-fulfilment of activities or rules within the module. Notwithstanding the above, there is no list of activities that can be evaluated (it would be difficult to make a list of socially obligatory conducts); it is required to comply with the intervention areas of the module programme: personal area (getting up, washing up, properly dressing, tiding up the cell, etc.); area for environment and common spaces care; area of interpersonal relations (to be punctual); area of activities (to carry out tasks, to attend workshops, etc.).

The **assessment of each inmate** is made both on a daily and a weekly basis. The **daily** evaluation is conducted by the surveillance officers of the module, who register on a daily book the global evaluation of each inmate. These remarks can be: "normal" or "positive". If a "negative" remark is registered, inmates can only get a score of "normal" in their global evaluation, while if their behaviour was good the global assessment shall be registered as "positive". A "positive" remark can only be assigned by the officers of the module. Nor educators neither therapists, technical or managing staff are entitled to do it. A "negative" remark is given when inmates do not fulfil the socially standardised rules or the ones of the module by both officers and those professionals working or visiting the module. A "negative" score can be assigned not only by the officers, but also by professionals visiting or working or entering the premises of the module. This "negative" remark has a limited impact, since it does not imply the opening of disciplinary proceedings and is not a serious matter in inmates' daily life. It is conceived as an educational factor that plays a fundamental role in the group dynamic (it must be considered that inmates are selected as members of MdRs on the basis of their good willing and positive behaviour). What matters is that inmates are informed that they are not complying with what is expected from them. A "negative" remark is not at issue and cannot be reviewed.

The **weekly assessment** is conducted by a professional team in charge of the module. The daily evaluation book is taken and examined early in the morning on the following day. At the end of the week an educator reports this information in an ordered and systematic way during the evaluation meeting of the Mondays Technical Team, where the treatment global improvement of inmates is assessed. After three months inmates with no “negative” score, as well as those with one negative and one positive score obtain a “favourable” evaluation; on the contrary, inmates with one or two negatives and one or two positive shall get a “positive” evaluation; finally, inmates with two or more “negative” scores or those that cannot progress properly in their individualised treatment programme shall obtain an “unfavourable” assessment.

The **weekly evaluation** has a direct **impact** on each inmate. As a result, positive, normal or negative assessments are automatically converted into points that can be exchanged for rewards. A negative evaluation during three weeks in a three-month period implies the automatic expulsion from the module. However, in practice the expulsion does not take place on this ground, since inmates will have already infringed other rules of the modules provoking the opening of disciplinary proceedings.



Evaluation	Scheme
DAILY EVALUATION Surveillance officers	On-going register of infringements of module's rules
EXTRAORDINARY GLOBAL BEHAVIOUR	NEGATIVE
WEEKLY EVALUATION Technical Team	<ul style="list-style-type: none"> Score; system of weekly tasks distribution No NEGATIVE results 1 negative 1 positive 1 negative 2 negative results and 1/+ positive

THREE-MONTH EVALUATION	NEGATIVE	2/+ negative results Bad evolution Bad conduct
	I.12/06 Activity Assessment and Promotion System	Three repetitions + previous notice = expulsion

Instruction 18/2011, of 10 November, of the General Secretariat for Prisons, relating to the intervention levels in MdRs is the reference document in this field.**10**

After detailing the functioning and mission of MdRs, we can now answer the comments made by the CPT in paragraph 57 of its report. In fact, it is required that inmates comply with rules in order to progressively gain a set of values and social rules, along with a personal discipline that will help them reintegrate into society after serving their sentence. Therefore, it is a mistake to associate MdRs only with cleaning activities. As already stated, these modules are organised in four areas. In this perspective, it does not seem to be disproportionate to require that inmates carry out cleaning activities in the modules as part of their tasks, considering that the infringement of these rules does not result in disciplinary sanctions. It only has an impact on the assessment of their behaviour.

Finally, it is worth to add that **Assessment Days on MdRs** were held, with the attendance of all professional groups involved, along with inmates and their relatives. **The conclusions were very positive:**

- The relations between professionals and inmates change resulting in greater trust between them. Both consider that coexistence is very positive
- Internal disputes decrease, along with the number of disciplinary proceedings
- Maintenance and cleaning of premises improve significantly
- The number of inmates that carry out all kind of activities increases
- Inmates' motivation to participate in other specific treatment programmes rises
- Normalised and individualised behaviour are promoted instead of prison codes
- Inmates learn how to raise problems, claims and suggestions properly and these are taken into account. This results in increased inmates' responsibility.
- Inmates learn to respect others' work
- Inmates are given the opportunity to correct any deviation from rules. This is an important educational factor
- Inmates' level of self-esteem increases, resulting in more attention for personal care and belongings and cells order
- Professionals can immediately detect the impact of their actions
- Inmates promote and defend the model.

In any case, **no problems arose concerning an excess or overload of tasks related to the environment care.**

The aim of the General Secretariat for Prisons **is to further strengthening the MdRs programme and extend it to all penitentiary centres.** In particular, two main objectives have been set out: 1º establishing in all prisons as many MdRs as possible; 2º evaluating the quality in MdRs established in each centre with a view at ensuring the fulfilment of the criteria governing their functioning (Instruction 18/2011, of 10 November) through an Evaluation Questionnaire to be filled in by both experts and inmates.

10 Available on www.institucionpenitenciaria.es

Paragraph 58 (Coercive means) and paragraphs 60-62 (Immobilisation measure)

The CPT considers it necessary to remind prison personnel that hand-cuffs shall not be used to fixate inmates to the beds, and recommends that this reminder be made public for all personnel. In the light of the observations made, the CPT recommends that the Spanish authorities take the necessary measures to revise resort to immobilisation thoroughly.

It is necessary in general to **take as a starting point the regulation of this type of measure** in Spanish Law at both the legal and regulatory levels and, specifically, that these are measures whose **use is foreseen solely and exclusively as exceptional**. Thus, according to Article 45 of Ley Orgánica No. 1/1979 of 26 September:

“Coercive means established in regulations may only be used, with the Director’s authorisation, in the following cases:

- a) To prevent escape or violence by inmates;*
- b) To prevent damage by inmates to themselves, to other persons or to property;*
- c) To overcome inmates’ active or passive resistance to orders issued by prison staff in the exercise of their duties.”*

The second and third points of this Article add the following:

“Two. When the urgency of the situation makes use of these means necessary, this shall be notified immediately to the Director who will make it known at once to the Judge in charge of the Execution of sentences.

“Three. Coercive measures shall be used exclusively to re-establish normalcy and shall last only as long as strictly necessary”

On the other hand, Article 71.2 of the Prison Regulation states that *“if, on the occasion of the security measures listed in the previous articles, officers should detect any regimental anomaly or any fact or circumstance indicating that the centre’s normal operation may possibly be disrupted, they shall make this known to the Head of Services immediately, without preclusion as applicable of use of the coercive means referred to in the following Article.”*

According to Article 72, temporary isolation, personal physical force, rubber defences, appropriate sprays and hand-cuffs are coercive means, and it is made clear at once that *“their use shall be proportional to the ends sought, shall never imply a covert penalty and shall be applied only if there is no other less onerous means of attaining the desired end, and as long as strictly necessary”*. Point 2 of this Article concludes *“when temporary isolation is imposed, a doctor shall visit the inmate daily”*.

Unfortunately, the reality of life in prisons means that it is sometimes necessary to immobilise an inmate mechanically using mechanical fixation straps for a given time, exceptionally and in strict compliance with the legal guarantees demanded for both application and supervision. This is in short a last resort in a complicated situation, understood to be the least traumatic and injurious and so more humanitarian and respectful of the inmate, its use governed in any event by the principles of necessity, proportionality, respect for the inmate’s dignity and fundamental rights.

At the time of the CPT’s previous visit, a set of recommendations was made to the Spanish Government concerning the application of **coercive means which the Penitentiary Administration subsequently included in Instruction No. 18/2007 of 20 December 2007. This Instruction was repealed in Instruction No. 3/2010 of 12 April which, on this point, retains the same text as in the previous Instruction, attached as Annex IV.** The new

Instruction includes most of the CPT's Recommendations, specifically the following:

- ✓ Application exclusively in the circumstances legally provided for in Article 45 of Ley Orgánica No. 1/1979 of 26 September (preventing evasion or violence; avoiding injury by inmates to themselves, others or property; overcoming active or passive resistance by inmates) and with the exceptions established in Article 72.2 of the Prison Regulation (patients convalescing from serious illness) or in Article 254.3 of those Regulations (pregnant women, women up to six months following the end of the pregnancy, breast-feeding mothers, women accompanied by children) except when their action could lead to an imminent danger to their integrity or that of other persons.
- ✓ Use with the means established in regulations.
- ✓ Proportional use and as long as strictly necessary.
- ✓ Prior authorisation from the Centre's Director unless not possible for reasons of urgency, in which case it will be made known to the Director immediately.
- ✓ Notification to the Judge in charge of the execution of sentences **expressly stating the date and time when the measure began and ended and the factual circumstances making its application necessary.**

Likewise, the **Instruction referred to** contains the following additional guarantees:

- **Use of hand-cuffs:** Long-term use of hand-cuffs is eliminated. Hand-cuffs shall be used momentarily **in transferring the person to the immobilisation rooms.** As long as isolation with immobilisation lasts, **use shall be made of the certified straps specifically designed for sanitary use,** in a prone or supine position, whichever seems the most adequate, but **in all events avoiding forced positions.**
- **Supervision of the immobilised person:** Sanitary immobilisations are ordered, directed and evaluated by doctors. **Regimental immobilisations will be subject to medical supervision as soon as the person has been reduced and immobilised, and the doctor must** decide whether he or she considers that the situation can or cannot be treated from a sanitary perspective. The doctor will also report in writing, stating whether or not there is some clinical impediment for the application of isolation with mechanical restraint.
- **Periodic monitoring in person of the inmate's state:** the inmate's state shall in any event be monitored periodically in person. Personnel in the internal regime section will record said monitoring by signing the monitoring box established for each particular case. The health division personnel will leave a record of their professional actions in the patient's clinical record.

Relative to the intervention of the **Judge in charge of the execution of sentences**, it is worth emphasising that, pursuant to Article 76.1 of Ley Orgánica No. 1/1979 of 26 September, **among other functions this judicial body “safeguards the rights of inmates and corrects any abuses and deviations which may arise in compliance with the terms of the penitentiary regime”** and that, until this date, this jurisdiction has not called the attention of Prison Administration in its resolutions to arbitrariness, lack of proportionality or excessive rigour in the application of the precautionary measures referred to.

The following may be concluded in relation to the recommendations and reassessments formulated by the CPT on this matter in its report:

1 Hand-cuff use is prohibited in all sanitary restraints and is authorised only for short-term regimental mechanical restraints such as transfers between departments. **Fixation to beds for sanitary or regimental reasons may employ only straps certified for sanitary use.** However, **the Prisons will be reminded of compliance with the provisions in place on this point, through the Penitentiary Inspectorate.**

2 The fixation measure should be implemented only in a **medical context** (that is in the medical centre of the penitentiary establishment) and should not be used as punishment or to compensate for a shortfall in qualified personnel.

3 The need to use restraining measures or to fixate an inmate mechanically may be a consequence of a regimental change or arise from causes related to a pathology. Thus, **from the regimental standpoint**, it is understood that it might be necessary to apply fixation measures or mechanical restraint to someone with a violent and aggressive attitude who has caused or may cause harm to themselves, to third parties or to the material resources and installations around them if adequate action is not taken. **From a sanitary point of view**, this measure may be used on a person in a state of serious psychomotor agitation of organic or mental origin or whose attitude, not necessarily violent, may obstruct or prevent a therapeutic programme such as the removal of probes or catheters or the administration of medication.

Fixation by mechanical means as a consequence of regimental changes will be performed in rooms especially designed for the purposes in the closed regime departments or in the parts of those departments intended for completion of disciplinary isolation punishments. Fixation using mechanical means for sanitary reasons will be applied in areas fitted out for the purposes in the infirmaries.

The **rationale underlying both measures responds to different causes and reasons** making it necessary to **retain both types of mechanical fixation as it is not possible to medicalise any disciplinary intervention nor can a measure be dispensed with which is recognised in legislation throughout Europe allowing for intervention in cases of serious disruptions of order or risk to people's health.**

4 At all events, from the regimental or sanitary standpoint, mechanical fixation constitutes an exceptional measure used in urgent situations, whose duration must be limited in time, and is exhaustively monitored by the associated personnel. Moreover, regimental fixation is always supervised in advance by a doctor who decides whether or not it is necessary to follow a care protocol. Because of this initial supervision, it is not felt that monitoring of regimental fixation by the doctors is necessary unless otherwise suggested by the circumstances of the person concerned (agitation, anxiety, etc.), so that a second medical evaluation is sought (as occurs in other disciplinary interventions).

5 In any event, fixation is not used as a means of punishment or to compensate a lack of qualified personnel because, as explained in reply to paragraph 50, **officers are trained in the handling of conflictive situations with inmates.**

Notwithstanding the foregoing, the Spanish Government shares an interest in ensuring that coercive means are used always and in any event in exceptional situations and for a limited time, with maximum respect for an inmate's rights, because they do substantially compromise not just their liberty but also their health and their very dignity. Accordingly, the current Instruction on restraining measures is to be revised with a view to establishing even more precisely the guidelines to be followed in this matter.

The following is a list of the occasions and circumstances when this measure was applied in the Puerto III Prison. The CPT figure on this question must be corrected, fixation having been used as a coercive means in twenty-eight rather than thirty-six cases in the first five months of 2011, specifically:

ORDER NUMBER	NIS	DATE	PENITENTIARY DATA (classification, regimental limitation antecedents Article 75.1 or first classification)
1	8213900016	13.01.11	Second classification
2	9111235434	30.01.11	First classification 91.2
3	2005006441	19.02.11	Fulfils security measure
4	2004010706	19.02.11	First classification 91.2
5	2004009011	22.02.11	Second classification
6	9335402097	01.03.11	First classification 91.3
7	8217000072	04.03.11	First classification 91.2
8	2004013695	05.03.11	Second classification
9	9031724904	07.03.11	First classification 91.2
10	2007029935	24.03.11	First classification 91.2
11	2002018044	03.04.11	Article 75.1
12,13,14	2009007819	08.4.11	First classification 91.2
		09.04.11	
		25.04.11	
15	2003013708	13.04.11	Article 75.1
16,17	9017116008	21.04.11 21.04.11	Time in First classification 91.2
18	2003022025	22.04.11	Article 75.1
19	9732382664	22.04.11	Second classification
20	9616855766	27.04.11	First classification 91.2
21	2004000705	29.04.11	Article 75.1
22	9705068752	07.05.11	Second classification
23	9311884829	12.05.11	Second classification
24	8626500071	24.05.11	Second classification
25,26,27	9610053769	25.05.11	First classification 91.3
		28.05.11	
		30.05.11	
28	9716775006	30.05.11	First classification 91.3

Of these twenty-eight cases, **four involved the use of rigid hand-cuffs** for transfer or emergency and lasted just **a few minutes**. (Cases 2, 23, 24 and 25).

The remaining twenty-four cases refer to twenty-one inmates, the coercive means of mechanical fixation using straps having been used with three inmates two/three times (cases 12, 13, 14, 16, 17, 26 and 27). The three inmates are or have been placed in first treatment classification (Articles 91.2 and 91.3 of the Prison Regulation) because of their manifest failure to adapt to the ordinary regime and, in one case, their extreme dangerousness arising from aggression against other inmates, the penitentiary personnel and self-harm for manipulative purposes.

Specifically the female inmate referred to in cases 12, 13 and 14, once transferred to another Prison, recorded **seventeen incidents of self-harm in a period of three months**, no significant psychiatric pathology having been detected either by the specialised services in the Andalusia health system (Cádiz) nor those of Castile-Leon (Ávila) to which she was referred for consultation.

According to the registers, rather than seventeen cases where mechanical fixation was applied all night to an inmate there were **ten, involving nine inmates**. Of these longer restraints, **eight refer to inmates who had shown signs of extreme violence or manifest failure to adapt throughout their time in prison** (Cases 4, 6, 7, 9, 12, 14, 16 and 27).

The CPT states in its report that “*on 8 April 2011, a prisoner was kept immobilised for twenty-one hours and, after nine hours’ rest, a further fourteen hours the following day. The woman declared that during the time when she was immobilised she was not allowed to relieve herself and so urinated on her clothes. According to the medical record, no-one from the medical team visited her throughout the time the measure lasted*”.

In this respect, the following must be detailed.

The inmate referred to entered the Prison because of her failure to adapt in the original Centre. In two months there, ten disciplinary procedures were opened against her and the regimental limitations applied in Article 75.1 of the Prison Regulation (“*those required to secure her person and for the security and good order of the establishments, together with those advisable for her treatment or those arising from her classification*”). She came to this Centre from the Badajoz Prison where there had been a further six disciplinary procedures in the previous two months. At the Puerto III Prison she was involved in multiple incidents and an effort was made to normalise her behaviour. On 8 April 2011 she was isolated provisionally after a fight with another inmate. Forty-five minutes later, in a highly agitated state, she threatened to kill herself while repeatedly knocking her head on the wall, which was why the mechanical restraining measure was used, with certified straps, and which continued until 9.00 am the following day. Throughout this time, the inmate continued to threaten to injure herself. It must be recorded that, effectively, on transfer to another Centre she injured herself seventeen times in three months. In other words, there was some credibility to those threats.

In any event, **while the mechanical restraining measure was being applied, the inmate’s state was monitored**.

On 9 April 2011, at 05.00 pm, the inmate once more injured her neck and wrists and was transferred to the infirmary for treatment: during the transfer, she tried to assault an officer. After being treated by the medical services, she remained in the infirmary under observation, both hands immobilised on the bed. She was discharged at 08.50 pm hours and transferred to module 15 in a situation of provisional isolation, mechanically immobilised using straps.

As to the inmate’s statement that she had urinated on her clothes, the CPT’s own delegation was able to see that there was no sign on the mattress on the bed in the secure cell that inmates had relieved themselves there. Here it must be remembered that the CPT delegation visited on a Saturday, without notice, so that they were obviously able to see the cell in its normal conditions, that is in a perfectly hygienic and salubrious state.

Should it be necessary to release the fixation straps and the violent attitude or the self-harm persists, other complementary measures are usually adopted, such as use of transfer hand-cuffs, control by a larger number of officers, or other similar measures deemed fit. Similarly, part of the fixation elements is released at mealtimes. In any case, if the inmate's violent actions or attempts at self-harm cease, the measure is ended and they are moved to another cell.

The inmate referred to here has had **special therapeutic monitoring**, described as follows:

- On 26 April 2011, she was included on a preventive basis in the Suicide Prevention Protocol, accompanied permanently as support and monitored daily by centre professionals. This measure remained in place until 24 May 2011.
- To avoid the classification regression proposed and allow the regimental limitations to be lifted, on 29 April 2011 a new specific treatment programme was designed and the inmate signed, agreeing to a therapeutic contract involving daily monitoring by the educator, psychologist and social worker.
- The inmate was evaluated psychologically: no psychotic disorder was detected but one of an emotional nature was, and she is at this time undergoing pharmacological treatment.

In relation to the other inmate the CPT deals with in its report stating that "*another inmate we met at the Puerto III Prison had been immobilised in module 15 from 01.05 pm on 1 September 2010 until 05:30 pm on 2 September (a total of twenty-eight and a half hours). There is no record that any member of the medical team checked on the state of this person throughout the time the measure lasted*", the following must be reported:

Revision of the file of coercive means applied on that date reveals no record of any use of "hand-cuffs" coercion, although it is recorded from 2 September 2010 from 01.05 pm until 3 September 2010 at 05.30 pm so that the hours coincide but not the date; this is considered to be an error.

The section refers to the inmate with identification number NIS 2003021828 who entered that Centre on 19 August 2010 from the A Lama-Pontevedra Prison as part of further first classification treatment pursuant to Article 91.3 of the Prison Regulation. On arrival at Puerto III, his file recorded multiple penalties for grave and very grave infractions, some of which he had served in the Centres where he was placed.

In the multitude of disciplinary procedures, eighty-two at the time, fifty of them unresolved, the inmate had shown himself to be especially violent, acting by surprise just as in the crimes for which he was serving time, with violence indiscriminately targeting other inmates or the prison staff. Because of his violent attitude and the large number of disciplinary files, he was given first classification in the terms of Article 91.3 of the Prison Regulation.

For example, on 14 August 2010, in a transit situation in the Topas-Salamanca Prison, he suddenly and very violently struck an officer on the jaw and who was referred to a maxillofacial specialist by the centre's medical services. Moreover, when attempts were made to reduce him, he attacked other officers with a broken broom handle used as a sharp "puncturing" object.

On 2 September 2010, just a few days following entry to the Puerto III Centre, he violently attacked two officers, one of whom fell to the ground semiconscious. It was this act which caused him to be fixated.

This inmate has been diagnosed with a “serious personality disorder”, his file containing numerous processes of hetero-aggressiveness, a high risk to the physical integrity of other persons. In the prison environment, the inmate had been treated by psychiatric specialists in various centres (A Lama, Dueñas-Palencia, Topas-Salamanca) and had been prescribed adequate medication which he refused to take so that it had been necessary on various occasions to apply for judicial authorisation to administer involuntary medical treatment.

Paragraph 63 (Register of Inmates for Special Supervision)

The CPT includes a series of observations in paragraph 63 on which some points must be made. In particular, the CPT refers to the delegation’s visit to the special departments where, as provided for in Article 10 of *Ley Orgánica* No. 1/1979 of 26 September and Article 91 of the Prison Regulation, inmates with difficulties in adapting to the ordinary prison regime or who are considered extremely dangerous may be placed. The CPT observes that there were also inmates in those departments who are included in the so-called Register of Inmates for Special Supervision (henceforth the F.I.E.S.) although placement in those Registers does not automatically mean restrictions on the living regime of the inmate in question.

The following must be indicated in this respect. The Registers of Inmates for Special Supervision were regulated in the recent reform of the Prison Regulation implemented in Royal Decree No. 419/2011 of 25 March. Thus, according to Article 6.4 of the Prison Regulation:

«The Prison Administration may create inmate registers intended to guarantee security and the good order of the establishment and the integrity of inmates. Inclusion in said Register shall not itself under any circumstances imply a living regime other than that specified in regulations.»

These registers are indeed designed to guarantee the security and good order of the penitentiary establishment, their reality being limited since inclusion there does not of itself imply a living regime different from the one provided for in the classification system already explained in response to paragraphs 51-52 of this report.

Therefore, **Instruction 12/2011 of 29 July 2011 from the Directorate-General for Territorial Coordination and Open Regime** establishing security measures in respect of inmates for special supervision, develops the provisions in the Prison Regulation dealing with the Registers of Inmates for Special Supervision, referring specifically to the limit set in the regulations whereby **inclusion in these registers may not justify the application of measures implying limitations in the regime or restriction or limitation of rights** (attached as Annex V).

It must therefore be made clear that **normally, inmates whose data are placed in the Registers of Inmates for Special Supervision are usually also first classification, but this does not cease to be pure coincidence.** In fact, some inmates included in the F.I.E.S. have second classification and so enjoy the ordinary regime, and their incorporation into the Register implies no alteration in the living regime assigned to them because of that second classification (ordinary regime).

Paragraph 64 (Material conditions individual cells in special departments)

The CPT requires a solution to the material deficiencies in the individual cells in module 15 of the Madrid IV Prison where the special departments are located. It also suggests that those cells do not appear adequate for spending long periods of time in detention.

The cells the CPT refers to in this point of its report have an area of 6.40 m² on one side, to which the 1.90 m² for the toilet is added, making up **8.30 m² total area in each cell** comprising the elements mentioned, i.e. a bed, a table (fixed to the floor), a washbasin, a lavatory and a shower. Thus the information in the CPT report is inexact when it indicates that each cell measures a total of 6 m².

On the other hand, **all the cells have heating**, so that here too the evaluation in the CPT report is incorrect. They are on a ground floor which may explain the lack of illumination, but they are all exterior, like the rest of the Centre. It is likely that the lack of illumination noted is considered according to the location of a particular cell situated either on the North (less light) rather than on the West or South (more light) and depending on the time when it was observed as well as the prevailing weather conditions. To provide the cells with greater illumination, remembering that all the Centre's windows are the same, would involve works to raise the height of the building a further floor or to install larger windows different from those in the rest of the Centre, something which is not feasible at this time in budgetary terms.

In connection with the inmates placed in the unit, this covers the following situations:

- **First classification inmates.** Although in a purely transitory situation and not permanent, there being other centres where this class of inmate is placed, and their stays are basically in order to attend legal proceedings.

- **Inmates subject to Article 75.1** (regimental limitations to secure the inmate and for the security and good order of the establishments, along with measures suggested for their treatment or which arise from their classification) and to **Article 75.2 of the Prison Regulation** (measures implying regimental limitations and taken at the request of the inmate or on his or her own initiative when necessary to safeguard the life or physical integrity of the prisoner, reporting to the Supervisory Judge). As in the previous case, the **situation is purely transitory** until the reasons for application of these measures end and, when this happens, there is express petition from the Centre for the inmates affected be relocated to other establishments and cease to be in this situation.

- **Inmates in an isolation regime.** As already explained in detail in other points in this report, sanction with isolation in a cell may last for a maximum of fourteen days, which may be prolonged to forty-two days to serve sanctions successively when this is authorised by the Penitentiary Supervisory Court, and it is absolutely residual because of its exceptional nature .

In conclusion, in the light of the above observations, it is not at this time considered essential to make corrections along the lines indicated by the CPT.

Paragraph 65 (Special departments)

The CPT recommends that efforts be redoubled to develop a regime specifically for inmates in special departments. It also asks for an explanation as to why two inmates in the Puerto III Prison are not permitted to exercise together with other inmates.

In relation to the system of classification into grades and their periodic review, general reference is made to the response to paragraphs 51-52. However, the following can further be specified. **Article 10 of Ley Orgánica No. 1/1979 of 26 September expressly indicates that for inmates - convicted or on remand - classified as being extremely dangerous or for cases of non-adaption to the ordinary and open regimes assessed for objective causes in a reasoned resolution, there shall be establishments to serve in closed regime or special departments**, provided that examination of the personality of the subject does not suggest the presence of anomalies or deficiencies which would mean their placement in the pertinent especial centre. Under Article 91 of the Prison Regulation, there will be **two categories of living system** within the closed regime, as follows:

- a) **Closed regime centres or modules** accommodating first classification inmates who demonstrate a manifest failure to adapt to the common regimes and,
- b) **Special departments** for first-classification inmates who have led or induced very serious regimental alterations, who have endangered the life or integrity of officers, authorities, other inmates or persons not part of the institution, both inside and outside the establishments, and where they show themselves to be extremely dangerous.

The regime in these departments is characterised by a **limitation on inmates' shared activities and greater control and surveillance of them**, in line with the provisions referred to in Articles 89 - 95 of the Prison Regulation.

Consistent with these criteria, to secure the gradual incorporation of closed-regime inmates into the ordinary regime, and given the need for a more direct and intense intervention, it has been sought to **incentivise programmes for inmate involvement in these circumstances**.

Thus on the one hand attempts are made to address the need to design an intervention model and **generic treatment programmes** adjusted to regimental needs and, on the other, to **programme cultural, sporting, recreational, training or work activities** for closed-regime inmates.

Here we must restate some of the considerations made particularly according to the terms of **Instruction 17/2011 of 8 November on the Protocol for Intervention and Rules in closed regime**. While the starting point must be that closed regime characteristically implies limitation on shared activities and the demand for and intensity of security, order and disciplinary measures, it must be emphasised that **these conditions do not amount to a reduction in treatment activities which might lead to substantial changes in these inmates' conduct and personality**. Quite the contrary, the provisions of the Intervention Protocol mentioned will be applied.

On the other hand, it is appropriate to refer to the **inherent rules on inmates held in special departments, also dealt with in Instruction 17/2011 of 8 November, in synthesis as follows:**

- Times out in the yard, minimum duration 3 hours
- They may have three books for reading, three magazines and/or newspapers. Those who are studying may have the necessary books and teaching materials.

- The cafeteria is open morning and afternoon and they may use it during their time in the yard.
- Access will be made possible to printed media, daily, press and magazines.
- There will be no distinction from other inmates in concession of intimate and family communications and for times together in suitable places.
- They may use a radio or player belonging to them.
- The use will be authorised of a television set belonging to them.

As to the **current situation of these special departments, during the third quarter of 2011**, all Prisons with a closed regime department and which are holding remand prisoners pursuant to Article 10.2 of *Ley Orgánica 1/1979* of 26 September, and/or convicted first-classification inmates in any category, **have installed the Protocol for Intervention and Rules in closed regime**. Specifically in September 2011, this Protocol was operative in **twenty-one Centres accounting for a total of three hundred and thirty-seven inmates**.

However, not all the inmates in a closed regime department are participating in this programme as, just with any other treatment programme, it is an **essential requisite that this be voluntary**, seen both in the wish to be involved in the activities and to follow the **technical team's directives, and in an evident motivation to change**. On the other hand inmates in the regime in Article 72.1 (subjected to coercive means), in Article 75.1 (measures adopted to guarantee the inmate's security and the good order of the establishment) and in Article 75.2 (measures adopted to guarantee the inmate's security) or those serving some form of sanction, are also excluded.

In any event, the programme includes a **varied range of activities e.g. educational, sporting, therapeutic, recreational, cultural, etc., implemented by a technical team comprising professionals from diverse specialisations**.

The following may be said concerning the **development of the programme in the Madrid III, Madrid V and Puerto III Prisons**:

- At the Madrid III Prison, this programme was halted because the first-classification young people held here were transferred to other Centres. Thus it is currently used for those being sanctioned or to first-classification inmates in a transit situation. Because of the occasional or transitory nature of these situations, there is no form of intervention for these inmates.
- An intervention programme is being developed at Madrid V Prison involving an educator, psychologist, sports monitor, occupational, social worker, teacher and Interior officials. In the third quarter of 2011 six inmates were included in this programme, carrying on therapeutic, sporting, educational, occupational and cultural activities.
- At the Puerto III Prison, this programme was introduced in February 2011 after the professionals in this Centre received a training course in the field in November 2010. In the third quarter of that year, nine inmates were integrated into the programme, engaged in therapeutic, sporting, educational, occupational, training and cultural activities. The professionals implementing it and making up the technical team are the psychologist, educator, sanitary technical assistant, teacher, sports monitor and the surveillance officers working in the department.

In connection with the two inmates at the Puerto III Prison who practiced sport alone and were not allowed to meet the rest of the prison population, these were inmates classified as extremely dangerous and with a record of repeated violent episodes. One of them was in fact involved in such an episode in the presence of the CPT delegation. Thus both inmates are subject to the living regime in Article 91.3 of the Prison Regulation which, in accordance with Article 93.1 paragraph three of those Regulations, states that “*when out in the yard no more than two inmates may, under any circumstances, remain together*” although this may be increased to a maximum of five for programmed activities.

Paragraph 66 (Treatment of inmates in special departments).

The CPT warns that lack of activities and prolonged periods of solitary confinement in special department cells cause mental problems in many inmates. Likewise, it recommends that the necessary measures be taken to provide vulnerable inmates in special departments with the necessary treatment and care, and those with mental illnesses are transferred to a health centre.

In addition to the response to paragraph 65 relative to the special departments, **in the matter of prison care, it is pointed out that this care is complete and targets not just prevention but also cure and rehabilitation.** This is integrated healthcare provided to inmates irrespective of their penal, procedural and penitentiary situation.

Within the healthcare model put in place in the prison legislation, **primary healthcare is provided with the Prison Administration's own resources or with outside resources arranged by it.** Thus each penitentiary establishment has a primary healthcare team comprising at least a general practitioner, a qualified nurse and an assistant nurse. A psychiatrist, stomatologist or dental surgeon are also periodically included in the healthcare team.

Aware of the problem of prisoners' mental health, the Prison Administration has designed a **Framework Programme for Integrated Care of the Mentally Ill in Prison** based on preventive, therapeutic and reintegration objectives. It has also concluded collaboration agreements with institutions other than prisons which are dedicated to the care of persons with mental illnesses, and their families.

In the matter of the CPT's indication in this paragraph, **it can be assured that all closed regime inmates are guaranteed access to the necessary treatments and medical care just as with their possible referral, for mental health reasons, to appropriate medical centres when suffering permanently from mental disorders.**

Paragraph 67 (Recent amendment to the Prison Regulation)

The CPT would like to be informed about the practical application of the Prison Regulation amendment concerning the treatment of inmates in special departments or closed regime.

The amendment mentioned by the CPT was made in Royal Decree No. 419/2011 of 25 March and, insofar of interest here, affected Article 90 of the Prison Regulation whose new paragraph three provides as follows:

“3. In centres with closed regime modules or departments, a specific intervention programme will be designed guaranteeing personalised treatment of inmates in that regime by specialised, stable technical teams.”

This aims to guarantee personalised treatment by means of specific, specialised programmes for the group of inmates whose living conditions, subject to greater regimental limitation, singularly affect their rights. The objective is to moderate or temper the restrictive effects the closed regime implies for those affected, by means of personalised attention specific to this type of inmate.

As to the practical application of this regulation, mention has already been made of the lead norm, the **Protocol for Intervention and Rules in closed regime approved in Instruction No. 17/2011 of 8 November from the Director General of Territorial Coordination and Open Regime**. This Instruction reports the amendment to the Prison Regulation in the sense of **reinforcing the participation of a stable technical team of professionals to deal with closed regime prisoners through specific, and personalised programmes with the ultimate aim of tackling the shortcomings and variables which led to their placement in that regime, and to foment their eventual integration into a less restrictive regime**.

Thus the Programme for Intervention with closed regime inmates is put in place in the Annex to the Instruction. Mention may be made of its fundamental points:

Its **basic principles** are to treat the closed regime as **transitory**; daily monitoring of inmates by professionals and through a programme of daily activities; collaboration amongst those making up the technical team and the surveillance officers; written communication of the conditions required for the programme, from the technical team to the Centre's Management; the on-going nature of the programme; design of an accompanying programme by the technical team once an inmate is about to leave the closed regime.

The very positive experience of recent years has led to the introduction in Prisons of an intervention programme with inmates in closed regime. The intention is on the one hand to address the need to design an **intervention model and generic treatment programmes adjusted to the regimental requirements and oriented toward the inmate's progressive adaptation to life in the ordinary regime and, on the other hand, a detailed programming of different cultural, sporting, recreational, training or labour activities for inmates in first classification for treatment in the two categories or for those subject to Article 10 of Ley Orgánica 1/1979 of 26 September**. The need for more direct and intense intervention with this group is driven by the fact that their living conditions, with greater regimental limitation, make it difficult to achieve any detectable progress enabling them to emerge from that situation.

Similarly, the programme seeks to **avoid their stigmatisation**, lack of social skills, the difficulties of social relation or certain personal characteristics making them prone to violence, so that its approach is to deal with all those circumstances to enable inmates to advance toward criteria of social integration, toward the dialogued resolution of conflicts, toward social relation skills and toward overcoming violence as the response to certain daily conflicts.

On the other hand, the regulatory reform foresees **periodic revision of permanence in the closed regime** (new Article 92.4 of the Prison Regulation), and **Instruction 5/2011 31 of May has reinforced the importance of those revisions, making them quarterly in all cases**. Thus, while the number of closed regime inmates dropped in 2011 by 2% compared with 2010, the number of revision resolutions issued by the Treatment Boards was up by 7%.

Paragraph 68 (Revision of penitentiary classification)

The CPT has sought observations on the perception among certain inmates that there would be no review of their classification for them to move from a special module to an ordinary module despite complying with the criteria in Article 92 (no disciplinary sanctions, good relations with officers and other inmates, participation in activities). In fact some asserted that they were certain that they would always remain in special departments.

Without wishing to appear repetitive, it must be emphasised that our penitentiary system is based on the so-called “**principle of scientific individualisation” separated into classifications** and heir to what are known as the progressive systems. This system initially places an inmate in one of the existing classifications (first, second and third) and the time he or she remains in one or another of these classifications depends essentially on the evolution of certain variables displayed by the inmate, whose classification may progress or regress depending on whether that evolution is positive or negative.

The classification variables and criteria must be weighted individually by the members of the Treatment Board in the Centre where the inmate in question is held. This Board, chaired by the Centre's Director, is made up among others of **specialists in behavioural science, jurists and other professionals working very directly with the inmate being examined.**

Classification evaluates a multitude of aspects, one of these being the conduct observed, but it is not the only one, and facets are also analysed concerning the criminal personality, the criminal record, variables in criminal capacity, links to criminal organisations, and taking in the concurrent social circumstances among which consideration must be given to the number of victims affected by the crimes committed and the social reach of those actions along with the external mesh supporting them and offering them a reference. Account must also be taken of the procedural, penal, penitentiary and other details, and this study cannot ignore the inmate's own perception of their crime or criminal record as, in some cases, they become critically divorced from the crimes committed while in others such a change does not occur.

It must be emphasised that **the study is performed individually**. There is a multiplicity of examples where other inmates involved in similar crimes have evolved and are placed in second or third classification for penitentiary treatment, but unfortunately this evolution does not occur in all cases.

In the specific case of one of the inmates indicated by the CPT, identification number NIS 9009911899, it must be remembered that he has at no time shown signs of repentance nor has he left the criminal organisation of which he is a member, and that he has been sentenced twenty-six times by the *Audiencia Nacional* for the following:

- i.More than two hundred convictions for different forms and degrees of crimes against life (murder, manslaughter, assault resulting in death, etc.)
- ii.Multiple convictions for crimes against the physical integrity of persons: different degrees and forms of injury, etc.
- iii.Multiple convictions for membership of an armed and/or a terrorist organisation, deposit of war weapons, explosives, etc.

Here, account must be taken of the terms of **Article 62 of Ley Orgánica 1/1979 of 26 September** referring to **penitentiary treatment**:

“Article 62. Treatment is inspired by the following principles:

a) It shall be based on scientific study of the constitution, temperament, character, skills and attitudes of the person to be treated, along with their dynamic-motivational system and the evolving aspect of their personality, leading to an overall judgement to be included in the inmate’s protocol.

b) It shall bear direct relation with a diagnosis of the criminal personality and an initial prognostic opinion to be issued based on a weighted consideration of the overall judgement referred to in the previous paragraph and a summary of their criminal activity and all the subject’s surrounding factors, be these individual, family or social.”

Unfortunately, in the cases mentioned by the CPT, unlike what has happened in many others of similar characteristics, progression in the classification has not been justified.

Paragraph 69-70 (Healthcare in special departments)

The CPT recommends that the Spanish authorities adopt the measures necessary to increase the number of psychiatrists in the prisons visited, particularly in the Puerto III Prison.

Healthcare in the Puerto III Prison is structured, as provided for in the penitentiary legislation, into two levels:

- 1) Primary care: Done by the Penitentiary Institution professionals. As the CPT report indicates, this Centre has seven full-time general practitioners, eleven nurses and fifteen assistant nurses. Potential psychiatric disorders not requiring the attention of a psychiatric specialist are also dealt with as part of this primary care. Should referral be necessary, this is done by the Autonomous Community’s specialised service.
- 2) Specialised care is provided by the psychiatric specialists of the Andalusia Health Service who see patients in the Centre itself. If admission to an acute patients unit is necessary, the reference hospital is the Puerto Real Hospital Universitario.

The consultant psychiatrist at the Puerto III Prison performed sixty-eight consultations in 2011. In this matter, the Deputy Medical Director reported that talks began at the end of 2007 with those responsible for Mental Health in the Health Council of the Regional Government of Andalusia to find solutions related to with specialised mental health care for Puerto III Prison inmates. The intention was to set up a fortnightly psychiatric consultancy in the Centre’s nursing facilities, which meant that a professional assigned to the Mental Health Centre was taken off the Service and relocated to the Prison. This intention **took form in the second quarter of 2008** and was defined in an Agreement with the following general aims:

- ✓ To offer healthcare backup to the professionals caring for patients with mental disorders in prisons, to improve healthcare quality.
- ✓ Provided in the framework of an intervention for a second opinion in the presence of the doctor in charge of the case.
- ✓ To manage the work on coordination between the Prison and the establishments patients come from.

- ✓ Programming of admissions to the Penitentiary Module of the Puerto Real Hospital Universitario.
- ✓ Training in the handling of patients with mental disorders.
- ✓ Provided for half a morning once or twice a month.

As indicated, in 2011 there were **sixty-eight psychiatric consultations noted for their difficulty of diagnosis**, special management or the destabilisation of known psychopathological processes. However, the prevalence of psychopathological disorders is not always related to serious mental illness so that the response to these problems is tackled from a multidisciplinary perspective.

- 1) For inmates with intellectual disability deficit, a **specific programme is being developed by FEPROAMI, the specialised Association with accredited solvency in the field** (Federación Provincial de Asociaciones a favor de las Personas con Discapacidad Intelectual, Parálisis Cerebral y Autismo de Cádiz, - Cadiz Provincial Federation of Associations for Persons with Intellectual Disability, Cerebral Palsy and Autism) member of the Confederación Española de Organizaciones en favor de las Personas con Discapacidad Intelectual, FEAPS – The Spanish Confederation of Organisations for the Intellectually Disabled).
- 2) On the other hand, the **Integral care programme for the mentally ill (PAIEM)** which forms part of the Penitentiary Institution's general programme is based on the premise that mental illness compromises the person as a whole, and approaches treatment through multidisciplinary teams made up of professionals from different areas whose intervention is integrated. To implement the PAIEM at the **Puerto III Prison**, a multidisciplinary team was set up comprising the medical and treatment Deputy Directors, a nurse, psychologist, social worker, jurist, doctor and internal surveillance officers. The consultant psychiatrist from the Andalusia Health Service and Non-Governmental Organisations also collaborate. **Thus, according to the latest figures, on 31 December 2011 twenty-three inmates were participating in this programme.**
- 3) As already pointed out, not all mental disorders amount to a mental illness. Many disorders are psychological. The **Puerto III Prison has 8 psychologists**. In addition to the specific treatment programmes, like the closed regime, they attend to inmates individually.
- 4) Finally, account must be taken of the **prevalence of dual pathology** among inmates (addictive disorder and mental illness). Development of drug-dependence programmes directly affects treatment of these disorders. A total of four hundred and twenty inmates, at different levels of intervention, took part in these programmes in 2011 in the Puerto III Prison. Of all of these, about seventy are following the intensive programme of the Therapeutic and Educational Unit located in module 4 in the Centre.

Paragraph 72 (Clarification of the incident at the Puerto III Prison)

The CPT wishes to be informed of the results of the investigation carried out by the Cadiz Public Prosecutor's Office and the findings of the autopsy report on the inmate who died in the Puerto III Prison when crushed by the cell's automatic door.

Unfortunately, on 25 February 2010 inmate K.A.T. died in the Puerto III Prison. When the *Prosecutor's Office* learned of the death on 15 March 2010 Informative Proceedings 6/2010 were begun, without resort to the criminal investigation procedures because the First Instance Examining Magistrate No. 5 in El Puerto de Santa María also ordered Preliminary Proceedings 260/2010 dealing with the same facts.

On 15 March, the *Prosecutor's Office* asked the prison management to report on the incident, and the Centre sent the following documents:

- a) A report notifying the facts, by the officers with professional identification numbers 9,083 and 53,253, both inclusive, in module 10 on the day of the death;
- b) A report notifying the facts, by the officer with professional identification number 50,474 on service in module 9 which forms a unit with module 10;
- c) A report signed by the Deputy Medical Director on the medical response;
- d) A report by the Deputy Medical Director on the toxic analysis performed on inmate A.G., cell companion of the deceased.

According to those reports, at 04.30 pm the cells on the second floor were opened. A few minutes following closure of the cells after the inmates had left, inmate K.A.T. called on the intercom to say that he had remained in the cell and asked for the door to be opened. Once the officer in charge of the module confirmed that the inmate was in neither the dining hall nor the yard, he asked the officer in charge of module 9 to come up to the gallery. The officer in charge of module 8 went up to the gallery and confirmed that the inmate in question was trapped by the cell door and so immediately called the medical services. The medical services sought unsuccessfully to resuscitate the inmate, declared him dead, and made this fact known to the Director of the Centre and the Duty Court.

Once the *Prosecutor's Office* had received all that documentation and because the facts had been placed in the hands of the courts, from 7 April 2010 a decision was handed down shelving Diligencias Informativas 6/2010.

For its part, the No. 5 Juzgado de Primera Instancia e Instrucción in El Puerto de Santa María had, as already pointed out, opened Diligencias Previas 260/210 as a consequence of the facts, heard them and shelved them in an **Order dated 4 August 2010, provisionally dismissing the proceedings**.

A remedy of appeal was subsequently brought against that Dismissal Ruling which was rejected by the Cádiz Audiencia Provincial on 11 April 2011, finding in its Legal Basis II that “*the etiology of the unfortunate incident has been sufficiently evidenced, and the absolute lack of involvement of any person in it, so that there are no indications accrediting that the facts as charged amount to a criminal infraction*”.

A copy of those Rulings is attached as **Annex VI**, together with the documentation received from the State Prosecutors' Office in connection with this incident (**Annex VII**).

Paragraphs 73-75 (Disciplinary sanction consisting of temporary in-cell isolation)

In relation to discipline, the CPT recommends the immediate adoption of measures to ensure that no inmate is placed in an isolation regime for more than fourteen days. Should a sanction exceeding fourteen days in an isolation regime be imposed on an inmate because of commission of two or more infractions, there should be provision for the isolation to be suspended for a certain period on the completion of the fourteen days.

In the terms of Article 236 of the Prison Regulation, the isolation sanction put in place for very grave infractions may not exceed fourteen days, or forty-two if the sanction was imposed for concurrent infractions. However, this rule is qualified by the terms of the second paragraph according to which, “*maximum compliance may never exceed three times the term assigned for the most serious sanction, or forty-two consecutive days in case of isolation in a cell*”.

It would not in any case appear opportune to fix a time limit on the isolation sanction given that reproof for the commission of a number of very grave infractions is not the same as the maximum limit set for the commission of a single infraction. Indeed, should such a limit be established, there would be a risk of diminishing the dissuasive power of sanctions, with all the consequences that would imply.

Moreover, Article 43 of *Ley Orgánica* 1/1979 of 26 September establishes a set of precautions and safeguards to preserve the health of an inmate subject to the isolation measure, such as daily medical monitoring and possible suspension because of the physical and mental state of the person affected, or because of illness.

For their part, Articles 247 and 250 of the Prison Regulation make it possible to defer implementation of the isolation and suspension of application of that sanction.

The CPT also considers that it would be preferable to reduce the maximum duration of the sanction in an isolation regime for certain infractions.

Here it must be made clear that Article 42.2.a) of *Ley Orgánica* 1/1979 of 26 September and Article 233 of the Prison Regulation deal with sanction in the form of cell isolation and provide that such isolation “may not exceed fourteen days”. This precept does however make two exceptions, although both must be authorised by the Judge in charge of the execution of sentences before they are put into effect: in the first place, as provided for in Article 42.3 of *Ley Orgánica* 1/1979 26 September, on repetition of an infraction, sanctions may be increased by half their maximum which would mean that the disciplinary sanction for such cases of a repeated sanction might reach 21 days’ cell isolation. In the second place, pursuant to Article 42.5 of *Ley Orgánica* 1/1979 26 September, in serving successive sanctions, the maximum term may never be more than three times the maximum for the most serious sanction or more than forty-two days’ isolation in cell.

Indeed, Article 42.5 of *Ley Orgánica* 1/1979 of 26 September provides that “the sanctions imposed on anyone guilty of two or more infringements shall be those for all such infringements, to be served simultaneously if possible and, if not, they shall be served in the order of gravity of each although the maximum for which they are served shall never exceed three times the term for the most serious, nor forty-two consecutive days’ isolation in cell”.

As to the guarantees on this type of sanction, Article 76.2 d) of *Ley Orgánica* No. 1/1979 of 26 September must be highlighted where it indicates that it shall in any case be the Judge in charge of the execution of sentences who shall approve cell isolation sanctions lasting more than fourteen days.

In this context, it must be indicated that the Constitutional Court has expressly ruled that this regulation is constitutional. Thus Ruling 2/1987 of 21 January found as follows in its Legal Basis II:

"The third line of argument, albeit without insisting much thereon, mentions Article 15 of the Constitution prohibiting «inhuman or degrading punishment or treatment» and must be linked to Article 3 of the European Convention on Human Rights. There can be no doubt that certain types of isolation in «black» cells, confinement absolutely isolated or closed, is a form of sanction involving conditions which are manifestly inhuman, atrocious and degrading, and so have been prohibited in the most modern penitentiary systems. Hence the restrictions established in the Law and the Prison Regulation for the acceptance, residual, of this type of sanction. According to 42 of the General Prisons Act, in principle «it may not exceed fourteen days» (albeit with possible increase by half its maximum if the infraction is repeated) and, in addition, when sanctions of this type accumulate, it may not be more than forty-two consecutive days. Moreover, it applies only «in cases where the inmate manifests clear aggressiveness or violence or repeatedly and seriously alters normal coexistence in the Centre». Its implementation is also subjected to very strict conditions: the cell must be of similar characteristics to the others in the establishment normally in the compartment habitually occupied by the inmate; it shall be served with medical report and monitoring; it is suspended in case of illness; it is not applied to pregnant mothers; the prisoner shall enjoy an hour's walk in solitary; they may receive one weekly visit; and the only limit is on the possibility of receiving packages from outside and acquiring certain articles in the prison store (Articles 43 of the General Prisons Act and 112 of the Prison Regulation). The restrictive legal regulation means that, on one hand, this type of sanction is not one more of those available to the penitentiary authorities but rather one which must only be used in extreme cases, and secondly that this sanction is reduced to separate confinement, limiting social coexistence with other prisoners, in a cell with normal conditions and dimensions, living regularly, and with possible loss of benefits (library, possession of a radio, etc.) which are available to the other inmates.

The Strasbourg Commission has had occasion in quite a few cases to examine complaints concerning this type of isolated confinement and its possible conflict with Article 3 of the Rome Convention. According to the Commission, solitary confinement does not, because of reasonable demands, itself amount to inhuman or degrading treatment save when, given the conditions (food, furnishings, cell dimensions), circumstances (library access, newspapers, communications, radio, medical control) and duration, an unacceptable level of severity is reached and, if it has been said that prolonged solitary confinement is undesirable, that has been in cases when the extreme duration of such confinement greatly exceeded the legal maximum established in our penitentiary legislation, of forty-two days. It is not the sanction of itself, but rather the set of circumstances and conditions of its application, including its particular form of implementation, the more or less strict nature of the measure, its duration, the aim sought and its effects on the person in question, which may specifically make that sanction an infraction of Article 3 of the Rome Convention (decision Adm. Com. Ap. 8.395/1978 of 16 December 1981)."

In the matter of the evaluation of possible negative effects on the mental health and social welfare that an isolation sanction in a cell lasting more than fourteen days might cause in the inmate sanctioned, the Spanish legal provisions make it possible to suspend implementation of this sanction as a measure because, according to Article 43 of *Ley Orgánica 1/1979* 26 September:

1. The isolation sanction will be served with a report from the establishment's doctor who shall monitor the inmate daily while in that situation, informing the Director of the inmate's physical and mental health status and, if applicable, the need to suspend or modify the sanction imposed.
2. Should the inmate being sanctioned fall ill and always provided that the circumstances make it advisable, the sanction of internment in an isolation cell is suspended until the inmate is discharged or the corresponding collective body deems fit, as the case may be.
3. This sanction does not apply to pregnant women and to women until six months following termination of the pregnancy, breast-feeding mothers and those who have their children with them.

The CPT's proposal would require legislative reform which is not considered essential. As seen, the Spanish disciplinary regime has sanitary medical guarantees (assigned to a doctor) and other procedural guarantees implicating control by the Judge in charge of the execution of sentences in the application of isolation sanctions in a cell.

The maximum duration of fourteen days for the term of the isolation sanction in cell is, considered individually, even lower than that in a substantial number of the countries around us, so that the Spanish sanction regime is in this sense clearly moderate. In addition, a reform of the sort suggested by the CPT would in any case require thorough reflection, meditated over time.

Paragraph 76 (Inmates' contact with the outside)

The CPT recommends that the Spanish authorities allow all visits to be conducted in an open regime, limiting those conducted in closed visiting rooms to cases where justified reasons of security concur.

The CPT raises the possibility that verbal communication in visiting rooms be made "open", that is to take place in family or private visiting rooms except in the case of prisoners where justified reasons of security arise.

The CPT's approach was already tried in the past and is thought not to be practicable at the present time because it would, as in previous cases, involve not just the applicable legal reforms but also structural or functional reforms for which there are currently no budget resources, and which would be to the detriment of inmates' rights.

That is because in most of the so-called pre-standard centres, it is impossible to allow all inmates to conduct all their communications in "open" form, and even in what are known as standard centres, which may have an approximate average of forty visiting rooms for private, family and cohabitational communications, such a number would prove absolutely insufficient to allow cadences enabling all inmates to communicate every week with members of their families, forcing a reorganisation of visits so that, in a general computation of the communications an inmate may enjoy, the present number would be reduced, which would not imply enhanced fluidity of communication with family members.

Thus it is considered that the communications regime is broad, diverse and covers all needs, while not contemplating the security problems which might arise from such a massive influx of persons to the centre for communication in an open regime. The need to review the legislation to allow inmates' communications with their families and friends to be "open" is not shared with the CPT.

Paragraph 77 (Courts in charge of the execution of sentences)

The CPT recommends that the Spanish authorities invite Courts in charge of the execution of sentences to visit all the Prison installations as part of their functions and to make contact with both prisoners and prison staff.

According to Article 76 of *Ley Orgánica* 1/1979 of 26 September, Courts in charge of the execution of sentences have "attributions to ensure compliance with the penalty imposed, to resolve appeals referring to modifications which may occur according to the terms of the laws and regulations, to safeguard the rights of inmates and correct any abuses and deviations arising in the implementation of the penitentiary regime". Specifically, the Judge in charge of the execution of sentences shall "h) Conduct the visits to penitentiary establishments provided for in the LECrim and the Judge in charge of the execution of sentences may, for the exercise of that function, seek the judicial aid of the Courts in charge of the execution of sentences in the locality of the establishment to be visited".

The visits to which this precept refers have a clearly instrumental aim, making it possible to check the functioning of the centres "in situ". That all facilitates exercise of another of their functions provided for in Article 77 of *Ley Orgánica* 1/1979 of 26 September, whereby the Courts in charge of the execution of sentences may address themselves to the senior administrative body of the Interior Ministry with jurisdiction in the running and management of all Prisons to formulate proposals related to the organisation and development of the surveillance services, regulation and coexistence inside the establishments, the organisation of the activities of the workshops, school, medical and religious care and, in general, the regimental, economic-administrative and penitentiary treatment activities.

Similarly, another of the functions of the Courts in charge of the execution of sentences is to aid in the resolution of petitions or complaints formulated by inmates in connection with the regime and penitentiary treatment, insofar as affecting their fundamental rights or their penitentiary rights and benefits.

In the matter of the function assigned to the Courts in charge of the execution of sentences, some of the considerations voiced in Constitutional Court Ruling 129/1995 may be recalled referring to the *fundamental rights of inmates and control of the action of the Prison Administration*: "*This control is in the hands of the Courts in charge of the execution of sentences - introduced to general acceptance in our regulations in Article 76 of the 1979 General Prisons Act, constituted as jurisdictional bodies in the criminal sphere by Articles 26 and 94 of the Ley Orgánica of the Judiciary - and who shall safeguard "situations affecting the fundamental rights and liberties of prisoners and convicted persons in the terms of Articles 25.2, 24 and 9.3 of the Spanish Constitution, constituting en effective means of control within the principle of legality, and a guarantee preventing the arbitrariness of the public powers" (STC 73/83, f. j. 3º). This is therefore a control implemented by "specialised judicial bodies" and constituting "a key element in the penitentiary system to guarantee respect for inmates' rights" (STC 2/87, f. j. 5º).*

According to the above considerations, the Judge in charge of the execution of sentences' action is not conditioned by any "invitation" from the officers in the penitentiary establishment to visit certain departments or zones in the centre, as the Judge's function is invested with all the attributions granted jurisdictional activity by the Constitution and the *Ley Orgánica* of the Judiciary. Thus it is not possible for the Administration to issue instructions as to the mode and manner in which a Judge in charge of the execution of sentences must conduct inspection visits as the Judge submits only to the authority of the law in the exercise of that function.

REGIMES OF DEPRIVATION OF LIBERTY UNDER THE LEGISLATION ON FOREIGNERS.

Paragraph 78 (Remission to new provisions on *Immigration Removal Centres (CIEs)*)

The CPT recommends that future Directives regulating CIEs take account of the standards indicated in its report, and asks to be provided with copies of them as soon as they are approved.

It is recalled by way of advance that, at this time, the provisions regulating the regime for the internment of foreigners comprise the following:

- *Ley Orgánica* 4/2000 of 11 January on the Rights and Liberties of Foreigners in Spain, and their Social Integration as drafted in *Ley Orgánica* 8/2000, of 22 December; 11/2003 of 29 September; 14/2003 of 20 November; 2/2009 of 11 December and *Ley Orgánica* 10/2011 of 27 July.
- The Regulation implementing the *Ley Orgánica* 4/2000 of 11 January on the Rights and Liberties of Foreigners in Spain, and their Social Integration, passed in Royal Decree No. 557/2011 of 20 April.
- *Ley Orgánica* 2/1986 of 13 March on Law Enforcement Agencies
- The Order of the Ministry of the Prime Minister's Office of 22 February 1999 on the operating rules and interior regime of CIEs.
- The Supreme Court Ruling of 11 May 2005 annulling certain provisions in the Ministerial Order cited in the previous point.
- Articles 153 - 155 of Royal Decree No. 2393/2004 of 30 December passing the Regulations to *Ley Orgánica* 4/2000 of 11 January on the Rights and Liberties of Foreigners in Spain, and their Social Integration, repealed virtually entirely.

As the Committee knows, CIEs are non-penitentiary public establishments attached to the Ministry of the Interior to hold foreigners undergoing procedures for expulsion, return or refusal of entry to national territory for the legally established reasons and who have been placed in the custody of the judicial authorities.

Accordingly, placement in these Centres has a preventive and precautionary aim and is designed to guarantee the foreigner's presence during the processing of their administrative file and implementation of the measure for expulsion, return or entry as the case may be.

Until now, the CIEs' interior regime was regulated in a 1999 Order of the Ministry of the Prime Minister's Office. However, this is now obsolete, superseded by the reality of the phenomenon of migration and by the passage of time, so that work is under way on a renewal of the internal regulation of the organisation and operation of these Centres to align their objective with guarantee of the rights of those who remain there for a given period of time (by legal mandate, never more than 60 days).

Thus the **Ministry of the Interior has drawn up a draft Royal Decree passing the Regulation for the Functioning and Interior Regime of Centres for the Controlled Stay of Foreigners**, something the Ministry considers essential among the priorities in its remit as the Minister made clear when appearing in the Congress of Deputies on 31 January, including among his ten objectives “*the need to revise the functioning of the CIEs*”. The following is an extract from that speech, clearly stating the firm wish to renew the regulation of the CIEs:

“Immigrants are not criminals just because they are immigrants. They are persons like us, granted the same dignity, the same rights and the same obligations [...] and breach of rules of an administrative nature does not make them criminals.

It is true that we have an unequal situation in the CIEs. I would in any case call your attention to some general indicators which, while not treated as an excuse not to introduce reforms, do point to the current reality in those centres. Thus, in the 4,116 places in the CIEs, distributed among the 12 centres - 7 on the peninsula and 6 in the Canary Islands - average occupancy in 2011 was 67.39 %, that is two thirds of their capacity. Likewise, the average stay per inmate was 18.21 days, while the law permits a stay in a centre up to a limit of 60 days. Those limits are well below the mean in European Union countries. Moreover, it should not be forgotten that while the number of unqualified expulsions has dropped in recent years, the figure for qualified expulsions, that is where there is a police or judicial record, or both, has clearly risen, from 57% in 2009 to 80% last year. We are speaking of forced returns. This means that a substantial number of inmates have committed crimes, giving CIE management particularly complex characteristics.

It must on the other hand be remembered that there are as many immigrants in the CIEs with police or criminal records (in the latter case when the sentence or part of the sentence is replaced by expulsion as provided for in Article 57.1 of Ley Orgánica 4/2000 of 11 January on the Rights and Liberties of Foreigners in Spain, and their Social Integration) as there are persons who have committed an administrative infraction: failure to possess the documentation to enter or reside in Spain, relevant not just in terms of the new regulation of the CIEs but also for a better understanding of the very special conditions which make the management of these Centres so complex.

In the light of all I have just explained summarily to honourable members, we must review the approach to these internment centres, and their management”.

The pertinence of this new Regulation, whose Draft has been completed, is justified not only by the express mandate Additional Provision Three of *Ley Orgánica 2/2009* of 11 December assigns to the Government but also by the convenience of specifically and comprehensively regulating the regime for the internment of foreigners employing provisions with the rank of a Royal Decree, definitively replacing the 1999 Ministerial Order in force until now.

It has therefore been **considered opportune to apply specific Regulations to regulate CIEs, decoupling this regulatory enablement from the General Regulation of the aforementioned Foreigners Act** in the belief that the relevance of the matter and the importance of the rights affected demanded detailed treatment of the different aspects of the conditions in which internment must take place, thereby enhancing the guarantees of foreigners who are the object of this measure.

As already indicated, in a comprehensive regulation of the regime for the internment of foreigners, it is also indispensable that account be taken of the social transformations which have taken place since the passage of the Order of the Prime Minister's Office on 22 February 1999 establishing the rules for the functioning and internal regime of the CIEs, changes which have seriously affected not just the phenomenon of migration in this country but also the very administrative activity of the internment of foreigners.

Precisely the experience acquired since the introduction of the Internment Centres, both from the Ministry of the Interior and from the approach contributed by diverse bodies outside the Ministry, and social movements and groupings of various types suggests that the Centres housing foreigners should be thoroughly reformed so that such reform implements the changes demanded in the Centres' structure and operation.

Therefore, **in their organisation and daily activity, two quite different areas must be distinguished, responding in turn to different ends.**

a) on the one hand, the security of the Centres and of the persons in them, an area whose preservation is assigned to the National Police which must, as specialised personnel, guarantee the normal development of the activity in the installations, preventing disturbances or re-establishing order if disrupted. Similarly, everything related to the processing of expulsion orders and a foreigner's permanence in the Centre are intimately and closely linked, both procedures conducted within the scope of the functions of the National Police without precluding competences assigned to the Judicial Authorities.

b) on the other, the care facet, which must be taken on by specialised personnel outside the Police, specifically by public employees in the General State Administration engaged in the organisation, management and control of the care services provided, be these social or in some other sphere, as part of those offered daily to the inmates which can be catalogued as logistic.

Given the nature of these services, there are in the current provisions various courses enabling the different bodies of the Ministry of the Interior, which is responsible for the Centres, to **conclude agreements or accords with public or private not-for-profit entities, institutions or organisations to outsource these services** without thereby impairing any of the competences, responsibilities and functions assigned to those administrative bodies in charge of the Centres.

Such a profound change must also be reflected and matched in the **naming of the Centres** as, while there is no express, specific rule establishing this, the generalised reference and expression in the previous regulation of the Centres that they were "for internment" seems to suggest aspects not related either to their nature as public, non-penitentiary establishments nor to the time inmates remain there. As Centres for the stay of foreigners where there must due control of entry, permanence and departure, it is felt appropriate to call them **Foreigner Controlled Stay Centres (CECEs)**.

The following matters are dealt with in the **draft Regulation**:

a) the general provisions to which the CECEs must adjust, outlining the definition, nature and purpose of these centres, along with those allowing them to be incorporated into the Ministry of the Interior, and setting out the mechanisms for collaboration with non-governmental organisations committed to assisting foreigners.

b) the personal and material resources these centres must be provided with, defining their nature and aim, their internal organisation as public, non-penitentiary establishments attached to the Ministry of the Interior, along with their organisational structure, headed by the figure of the director as guarantor of inmates' rights and ultimately responsible for their security and operation, with the active involvement of the heads of the different services – security, sanitary, assistance – in decisions concerning the Centre's operation, by being present on the Coordination Board.

c) the rights and duties assigned by Ley Orgánica 4/2000 of 11 January to the inmates, with specific sections dedicated to the presentation of claims and complaints and the need for each Centre to keep a Log of Petitions and Complaints available to inmates.

d) the main procedures for action – entry, departure and escorting inmates – are described in detail particularly emphasising those dealing with the notification of rights to new inmates and the requisites and guarantees necessary for the completion of these formalities.

e) the Centres' operational regime, timetables and their general activities, with specific sections on the regulation of the regime of family visits and interviews with Lawyers and Diplomatic and Consular Authorities.

f) the training of the personnel working in the Centre, the rules of conduct expected of them and the control and inspection mechanisms, highlighting regulation of the figure of the Judge competent to control the stay in the Centre and the administrative bodies entrusted with the Centres' internal supervision.

g) surveillance and security measures the Centres must adopt.

h) the regime of visits to Centres by non-governmental organisations for the defence of immigrants.

On the basis of these data, as soon as the new Regulation on CIEs Internal Regime is officially published, the Committee will, as requested, receive the final text.

Paragraph 79-80 (Revision of the material conditions of the CIEs at Aluche in Madrid and at Zona Franca in Barcelona)

The CPT asks for revision of the material conditions and regime in the Aluche and Zona Franca centres and if applicable in other CIEs, with a view to ensuring that these centres are conforming to a less restrictive environment (see also paragraphs 86 - 89).

It must in the first place be emphasised here that the **material configuration of the CIEs conforms to the end sought with them which is to guarantee the permanence of a foreigner while his or her file is processed and to ensure implementation of the expulsion, return or forced departure from the territory, as applicable**. Thus the bars in the windows and in both passages and cells have been installed precisely because they are inherent to that end, namely to facilitate the repatriation of foreigners; thus such passive restraining elements are necessary because, as the Committee will well know, attempts to flee in order to thwart repatriation are by no means few.

On the other hand, it must not be forgotten that **a quite notable percentage of inmates have a police record or come from Prisons, so that measures designed to prevent possible escape are those strictly necessary**. Moreover, if some escaped inmates have a criminal background, that increases the danger of escape, leading to **additional risks**.

As to other measures which help to create a “*restrictive regime*”, it is true that such restrictions exist (limitations on visitor numbers, times, lack of “intimate” visits, etc.), but **it is attempted to make these as few as possible, or those essential to secure these Centres’ objectives.**

Paragraph 81- 82 (Allegations of mistreatment in the Madrid and Barcelona CIEs)

The CPT reports that it has received various allegations of mistreatment by personnel in the CIEs at Zona Franca (Barcelona) and Aluche (Madrid). It also wishes to know why there has been no investigation of the events of 22 May in the Aluche Centre. The Committee further reiterates its recommendation to the Spanish authorities to ensure that adequate investigation is quickly opened when there are reasons to suppose that there may have been mistreatment on the part of the police.

The CPT recommends that all police in service in the Aluche and Zona Franca centres and the security forces who may intervene there be reminded that all forms of mistreatment of detainees –physical or verbal – is unacceptable and shall be firmly punished.

1. In the first place, and in relation to the allegations received in the Zona Franca CIE referring to “*credible complaints of mistreatment in a small room used as a library for male detainees*”, there is no record that any inmate might have been mistreated by officers, although it is true that there is indeed in this Centre a small library also serving as a waiting room for inmates who are to be visited by the medical service, both spaces being adjacent, and it is the case that at the time of the visit there were no cameras in this room.

However, police sources have been consulted and it can be stated that at the time of the writing of this report CCTV cameras are installed in the room.

As to the complaint of excessive use of force, it is emphasised that, in any violent incident caused by an inmate, the police response is always in keeping with, appropriate and proportional to that used by the inmate, and the head of the police in service always reports the facts in writing and the measures taken and this is subsequently referred to the pertinent Judicial Authority, given that all Centres for the internment of foreigners are subject to control by the judicial authorities.

In connection with “*racist insults by police officers*” in the Zona Franca CIE, also highlighted in the Preliminary Conclusions drawn up by the CPT on 13 June following its visit, there is no record to the effect, either in writing or verbal complaint from the inmates themselves. There are daily personal interviews with 5 or 6 inmates, none of whom has to this date mentioned having been the object of racist insults.

Nor has the Delegate Prosecutor for Foreigners noted this type of conduct or situations on any of the periodic visits to the Zona Franca CIE, when moreover he interviewed some of the foreigners held there without first identifying himself to the Centre’s Management.

2. Concerning the events of 22 May 2011 in the Aluche (Madrid) CIE, as the report itself states, the Committee was provided with a document which related in detail the succession of events, with the initiation of preliminary proceedings which were then referred to the Administrative Office of the Courts of Madrid.

In fact, according to the documents held in the then Directorate-General for the Police and Guardia Civil, what happened on 22 May was a succession of arguments led by several groups of inmates which ended up in a riot, making it necessary to seek the support of the Police Intervention Units. There was also aggression among the inmates which resulted in injury to inmate J.R.G, a Peruvian national who had entered the CIE on 21 May on orders from the Examining Magistrate's Court No. 7 of Madrid and who was expelled on 15 July.

As a consequence of the foregoing, police procedure number 11.588/11 was processed, by Group VI, and delivered to the Judicial Authorities, in fact to both the Duty Examining Magistrate's Court of Madrid and to the Court for Control of Foreigner Internment Centres No. 19 in the capital.

According to the police sources consulted and the accredited documentation already delivered to the Committee, the facts occurred as follows:

During the weekend of 20-22 May, there were 235 male inmates, distributed on the 2 floors in the CIE, 118 on the first floor and 117 on the second. In all, Moroccans and Algerians totalled 52, there were 30 Senegalese and Nigerians and a group of 40 South Americans.

On the morning of 22 May, there was a confrontation between two groups of inmates (Arabs and Sub-Saharan) which was brought under control by the Centre's Security Officers. The altercation was repeated in the afternoon between inmates on the second floor, causing injury to inmate J.R.G, from Peru, who was attended by the Centre's Medical Service and then transferred to the Hospital Universitario Doce de Octubre with a dislocated right shoulder; he returned later to the CIE. Not knowing the inmate/s who assaulted him, refusing to provide any details, and in the absence of images of the event captured on Closed Circuit Television, it was not possible to confirm either the time of the attack nor the perpetrator.

During the evening/night, at dinner time, the first-floor group of inmates (118) led a further confrontation using the trays and spoon provided for them to eat their food, involving Arab inmates against a group of Chinese inmates. The officers present were able to control the situation, not without risk to themselves and to the Chinese inmates who could be removed from the dining halls and housed in a secure zone. The remaining foreigners of the 118 were taken to their first-floor modules, with great difficulty because of the tension and their resistance to being placed in the rooms.

Given the pre-riot situation, with attacks on furnishings on the first floor and ignoring all the officers' instructions to abandon their stance, aid was sought from the Police Intervention Units, through the 091 call number's Head of Section.

They went to the Puma-121 Centre with the CIE officers and brought the situation under control, the inmates, their belongings and their accommodation were searched-frisked, and at about 11.00 pm the situation was normalised.

The upshot of the incident was material damage to two toilets and another two doors, the result of the inmates' attacks on these fittings, and the maintenance service had to intervene because of leaking water.

Likewise, and given the situation of extreme tension and risk, the Centre's Medical Service attended the following persons, possibly because of the police action in putting the riot down:

- L.C, an Algerian national, admitted on an order from the Number 4 Examining Magistrate's Court of Alcalá de Henares.

- B.A, a Moroccan national, admitted on an order from the Number 49 Examining Magistrate's Court of Madrid.
- A.Z.L, a Colombian national, admitted on an order from the Number 1 Examining Magistrate's Court of Arganda del Rey.
- L.R.G, a national of the Dominican Republic, admitted on an order from the Number 1 Examining Magistrate's Court of Gijón.
- O.E.M, a Moroccan national, admitted on an order from the Number 7 Examining Magistrate's Court of Madrid.

Finally, procedure No. 11.588/11 was heard by Group VI of the Provincial Brigade for Foreigners and Documentation, making it clear that the rioting inmates had used the following elements which were handed over to the Officer Responsible and the Secretary in the proceedings, along with a copy of the Hospital medical report of J.R.G's discharge and a copy of the SAMUR medical report on the same inmate:

- Two toothbrush handles sharpened at one end.
- One toothbrush handle sharpened at one end.
- Two metal knife blades of some 3.5 cm.
- A shaver head containing two knives.
- Small red scissors of about 10 cm.
- Two lighters, one red and the other white and red.
- A blunt object with a handle, handmade with a screw and bandages, approximately 9 cm long.
- A red plastic knife approximately 17 cm long of the sort used to eat.
- Two metal spoons, of approximately 20.5 cm of the sort used in the CIE dining hall.
- A metal spoon handle of approximately 12 cm of the sort used in the CIE dining hall.
- A handmade fuse, made with toilet paper, of some 50 cm.
- A photographic report of the damage caused to the CIE fittings and rooms and of the items seized.

It is also pointed out that submissions were made concerning these events at the highest levels of the National Police setting out the facts referred to should disciplinary action be necessary; there is to this date no record of any judicial or administrative pronouncement suggesting that the action taken was incorrect.

On the other hand, it is not true that the police officers proffered racist insults to the inmates; on the contrary, a report by the Centre's Management states that it is the police officers, more specifically policewomen, who frequently suffer insults and threats from the inmates.

Therefore, a first conclusion may be drawn from the above: it is strictly erroneous that there has been no investigation, particularly when referral of procedures to the judicial authorities is the main guarantee that facts are monitored and examined by a completely independent body. If it is the CPT's wish, as previously in its report, to state that the investigation was not done by a differentiated body not part of any of the State Powers, this Department's posture on the necessity/suitability of creating an "*independent*" Authority apart from the Judiciary was made clear in the prior report delivered to the Committee last 13 March 2012 in relation to paragraphs 15 and 30 of its document.

It is in fact considered unnecessary to create any other control body particularly when, following the recent reform of the provisions on foreigners implemented in the *Leyes Orgánicas* 2/2009 of 11 December and 10/2011 of 27 July, and passage of the new Regulation in Royal Decree No. 557/2011 of 20 April, the supervisory role of the judicial bodies has been strengthened with the following provision specifically in point six of Article 62 of *Ley Orgánica* 4/2000 of 11 January:

"6. For the purposes of this Article, the Judge with competence to authorise and as applicable invalidate internment shall be the Examining Magistrate's Court in the place where the detention took place. The Judge competent to control the time spent by foreigners in the Internment Centres and in the Non-Admission and Border Facilities shall be the Examining Magistrate's Court in the place where they are located, with the designation of a specific Court in those judicial districts where there are various. This Judge shall, with no subsequent remedy, hear petitions and complaints filed by inmates as affecting their fundamental rights. The Judge may also visit such centres when dealing with a grave breach or whenever he or she may deem fit".

Likewise, part six of Royal Decree No. 557/2011 of 20 April, provides as follows:

"6. During internment, a foreigner shall be at all times at the disposal of the jurisdictional body which authorised that and which shall be notified by the governing authority of any circumstance relative to their situation which may alter the judicial decision concerning their internment".

It is also recalled in any case that foreigners may at any time file a complaint for alleged mistreatment, a resource which is in fact used and in most cases closed when it is recorded that there was no such conduct.

Finally, in response to the recommendation that an adequate investigation be opened whenever there are reasons to suggest that the Police may have used mistreatment, it can be asserted that in those cases or on the slightest indication, the mechanisms are automatically activated which the legal provisions put in place to clarify the alleged facts (complaint, opening of police procedures, even investigation by such institutions as the Ombudsman whose 2011 report makes clear how the great majority of charges or complaints received are shelved because no indications are found accrediting any criminal infraction).

In other cases, also analysed by the Ombudsman in his latest report, proceedings are accredited which are still pending and whose completion has been sought from the State Prosecutor's Office, with the opening of oral proceedings in some cases, also monitored by the Institution.

It is therefore inexact to make an accusation of inactivity or to recommend the implantation of mechanisms which are already in place, although not always resulting in criminal convictions or sanctions for conducts which do not incur any legally foreseen form of infraction.

3. In line with the foregoing, the Directorate-General for the Police emphatically stresses police action registered when there are signs of a criminal infraction. These cases are reported immediately to the competent court and investigations are initiated by both the Disciplinary Unit and the Security Personnel and Services Inspectorate in the State Secretariat for Security.

4. Finally, **on the recommendation to recall the legal duties assigned to police officers concerning mistreatment**, it can be added that, like any other officers, they are required at all Scales and in all Categories (always within a minimum certified base) to have prior legal knowledge which must be evidenced in the competitive examinations for entry to the National Police, beginning with the 1978 Constitution as the supreme rule, master of all the others.

Likewise, after passing the examinations and before being named career officers, they must complete the appropriate training courses (which are eliminatory) where legal matters occupy a preeminent place, at the same as dealing with subjects such as Professional Ethics.

In addition to all this, a National Police officer is required, throughout his or her professional career, to complete on-going and permanent training particularly if aspiring to promotion and any specialised posts, obtained through courses, seminars, lectures, discussions etc. imparted by the Force itself or by other bodies and institutions, many of them to high standards and degrees of specialisation, and including express prohibition on conduct involving mistreatment, something also expressly banned under both the general provisions (*Ley Orgánica 2/1986* of 13 March, on Law Enforcement Officials) and those of a sectorial nature applicable to them.

In fact, in the very regulation of the CIEs, Article 62 bis of *Ley Orgánica 4/2000* of 11 January establishes the right of all interned foreigners “*to safeguard of respect for their lives, physical integrity and health, without being subjected under any circumstances to degrading treatment or mistreatment by word or action, and for their dignity and privacy to be preserved*”.

Paragraph 83 (Monitoring compliance with the provisions in place on the CIEs)

The CPT recommends that the Spanish authorities adopt the measures necessary to ensure that practice in all CIEs be adjusted to the demands mentioned above (a detainee with lesions to be seen immediately by a doctor who must in addition carry out a complete examination, indicating whether the lesions might be compatible with accusations of abuse of authority by the security forces). It also asks that, should this be the case, the doctor forward a file to the competent authorities, with all the evidence.

It can be stated on a preliminary basis that **access to professionals in CIEs is completely free and unrestricted** so that, during consultation times, any inmate wishing to do so can visit the doctor. Outside those times, should the situation so require, inmates are attended by the emergency services or taken to hospital.

Similarly, when a person in police custody has lesions, the officers in charge of that person will take the inmate to the doctor so that he or she can issue the related injury report, with application of Instruction Three in Instruction No. 12/2007 of the State Secretariat for Security which provides in paragraph six as follows: “*should a detainee have any injury, whether or not imputable to the detention, or declare that they have such injury, they must be transferred to a centre immediately for evaluation*”.

It must also be pointed out that the medical examinations carried out in the Internment Centre are private, their content reserved between patient and doctor with the **sole exception** of those cases where the medical personnel must report certain aspects to the Management with a view to guaranteeing the health of the other inmates, or when it is necessary to coordinate with bodies outside the Centre itself. Thus, if the medical personnel considers it fit to deliver a professional report to the Courts, this is done on the personal initiative of the doctor without the need to consult or request authorisation from the Director.

It must also be pointed out that if there are indications that any officer in the Ministry of the Interior may have committed not so much a crime as an infraction of the rules of conduct required under *Ley Orgánica 2/1986* of 13 March on Law Enforcement Officials or the Instructions and Circulars issued by senior bodies, the procedures in place for accountability shall be opened up without delay, with the start of an investigation by the Disciplinary Unit and the Security Personnel and Services Inspectorate within the State Secretariat for Security, all without precluding initiation of the mandatory police action leading to judicial proceedings should indications of a criminal infraction be appreciated.

On the other hand, it must be made clear that the Working Document for the regulation of the CIEs expressly states that there shall be a Health Service in each centre which is the responsibility of a qualified Doctor who shall be assisted in his or her tasks by at least one ATS (Technical Healthcare Assistant) or the holder of a University Nursing Diploma. The Directorate-General for the Police will make the necessary provisions to ensure that this service adapts to the Centre's needs at all times, depending on the level of occupancy. The Healthcare Assistance Service is assigned not just the sanitary, medical and pharmaceutical care of foreigners admitted, but also inspection of the hygiene services, reporting and proposing necessary and adequate measures to the Management for approval following review by the Coordination Board.

Likewise, following a foreigner's entry in the Centre, they undergo a checkup by the Centre's Medical Service as soon as possible to find out whether they suffer from any physical or mental illness or symptoms of drug addiction, and appropriate treatment is prescribed. Should the Doctor consider that the illness or condition makes it advisable to admit the patient to hospital, a reasoned recommendation to the effect shall be submitted to the Director of the Centre for approval. Should a check-up reveal lesions, the Centre's Medical Service will draft a medical report and, if necessary, order the patient's transfer to Hospital according to the procedure put in place in this Regulation. It shall in any event be recorded whether or not the lesions are prior to arrival in the Centre and whether they were described previously in the professional report on lesions which must be submitted together with the admission documentation.

Paragraph 84 (Communication between police officers and foreigners in the CIEs)

The CPT recommends that the Spanish authorities put an end to this practice; the personnel rendering service in the CIEs should address inmates by name.

In relation to this recommendation, consultation with departmental sources revealed no record of such practices. It must even so be pointed out that the CIEs benefit from different control measures, including judicial supervision, and visits have been facilitated to them by all types of organisations and associations who have received no notice of complaints for these facts.

Paragraph 85 (Investigation of the situation of a Bolivian citizen the victim of mistreatment in the Madrid CIE)

The CPT asks to be informed of the situation of a Bolivian citizen who had been a victim of alleged police mistreatment at the time of his expulsion from the territory with destination Santa Cruz on 22 June 2011. As this matter is being studied by the Number 6 Examining Magistrate's Court of Madrid, the Committee would be grateful if it were informed of the result of the process.

The Committee also recommends that the Spanish authorities adopt the necessary measures to initiate procedures which ensure verification of the health status of a foreigner when, involved in an attempt to thwart an expulsion, he or she is examined by a doctor on return to the CIEs.

It also recommends that the necessary measures be adopted for escort personnel involved in expulsion operations to receive appropriate training and for expulsion operations to be duly documented. It also underlines the need, when an expulsion procedure has been aborted, to complete a medical examination of the persons who were to be expelled and, where applicable, for a certificate to be signed describing the lesions suffered.

In the first place, in relation to the particular case to which the CPT refers in this section, the data provided are not sufficient to identify the person cited by the Committee with complete certainty. However, considering that the “*Bolivian citizen whose case is being heard in the No. 6 Examining Magistrate’s Court 6 of Madrid*” might be the person with initials F.B.G, it is reported that there is no reference to any judicial procedure being heard for the facts set out, so that it is impossible to facilitate details of its possible status or outcome.

Nevertheless, in connection with this particular case, mentioned in paragraph two of this point, the **Office of the Commissioner-General for Foreigners and Borders** in the **Directorate-General for the Police has already delivered reports to the Ombudsman dealing with Complaint Number 12000520, and to the Disciplinary Unit and the Security Personnel and Services Inspectorate, to the Consulate-General of Bolivia in Spain and to the Ministerio de Ministry of Foreign Affairs and Cooperation at those bodies’ requests.**

On the other hand, relative to the questions raised concerning the expulsion procedure, referred to incidentally above, the point of departure must be that the **Office of the Commissioner-General for Foreigners and Borders** has, along with the Training and Finishing Division been implementing on-going courses and training in specialisation and refresher activities for members of the National Police in the different areas relating to foreigners. Thus the personnel accompanying foreigners being repatriated are familiar with the legislation and the operational criteria governing these operations. However, **it has already been pointed out that the new Regulation will require police officers posted in these Centres to have particularly qualified training in Human Rights, Security and Prevention.**

As to the recommendation to document expulsion operations, **all expulsions are systematically and permanently documented** so that, from their preparation through to their termination, there is documentary record of them. In addition, the Court which ordered the internment is always informed, for its implementation.

It can be pointed out, as already indicated *ut supra*, that in the matter of the recommendation that “*when an expulsion procedure has been aborted, to complete a medical examination of the persons who were to be expelled and, where applicable, for a certificate to be signed describing the lesions suffered*”, if there are signs that a foreigner has or states that they have lesions, that foreigner is given medical attention and it is the doctor who draws up the report on the lesions and who, completely independently, refers it as deemed fit, while not precluding the initiation by police officials of the legally established formalities.

Finally it should be emphasised here that the working document for the drafting of new Regulations for the Centres expressly states that, at the moment of departure, **certificate will be provided of the period of internment and, if medical treatment should be continued, a professional report on the person’s health status and a proposal for the therapy.**

Paragraph 86 (Reducing the occupancy rate of cells in the Madrid CIE)

The CPT recommends that the occupancy rate be reduced in the CIE cells at Aluche to guarantee a minimum of 4 m² living space per inmate. In addition, each cell should be fitted with chairs and a table, and have a toilet.

In reply to this recommendation and in the matter of the living space adequate for each inmate, it is pointed out that **the occupancy of the Aluche Centre does not at this time exceed 71%.**

In connection with toilets in the rooms, a meeting was held recently with Architects from the Financial and Technical Division of the Directorate-General for the Police and those responsible from the company awarded their construction, as a result of which **work to provide the rooms with toilets began on 17 April 2012.**

Paragraphs 87 and 88 (Improved internal organisation of the Madrid and Barcelona CIEs)

The CPT asks the Spanish authorities to outfit the cells in the Zona Franca CIE with a table and chairs.

It also recommends:

- that meals be revised in both centres (Aluche and Zona Franca) to guarantee in particular that they are adjusted to inmates' cultural specificities;
- to ensure that inmates have sufficient products to maintain their personal hygiene and that of the cells where they are housed;
- to guarantee inmates access to clean bathrooms and toilets at any time, including at night.

The report on this aspect must begin by suggesting that detailed reading of the paragraph suggests that all the conclusions reached are based solely on the inmates' observations, something which may substantively affect the findings of CPT members.

With this said, it is pointed out that **the working document for the drafting of new regulations for the Centres for the Controlled Stay of Foreigners sees inspection of the hygiene services as a competence of the ATS** mentioned above, reporting and proposing necessary and sufficient measures to the Management for approval and following review by the Coordination Board in connection with the following:

- the state, preparation and distribution of food, which must be adequate for maintenance of a normal diet for interned foreigners, or any of a special nature which, in the doctor's opinion, is required for certain foreigners.
- toilet and hygiene of foreigners interned, and that of their clothes and appurtenances.
- hygiene, heating, lighting and ventilation of the centre's rooms.
- services to periodically monitor the centre's salubriousness.
- prevention of epidemics and the adoption of measures to isolate infectious-contagious patients.

In connection with the **Zona Franca CIE**, the distribution of the rooms, even though the **occupancy rate is 54.12%**, is designed for potential full occupancy so that, in these circumstances, the addition of more furnishings there is unfeasible at this time.

On the other hand, on the other matters raised by the CPT in these two sections, the Directorate-General for the Police currently has a contract with a company providing meal service to the CIEs, and this company follows the guidelines adopted by the medical personnel in the provision of specific diets. **The food quality is also guaranteed by periodic kitchen checks by the Barcelona City Council Inspection Service**, which are duly certified. In addition, each inmate's special cultural, religious and medical requirements are also taken into account.

At the **Centre in Aluche**, the meals provided to the inmates are also prepared by nutrition and food security professionals. **The Centre Management and Medical Services also monitor** with periodic meetings between those Services and the Management to improve, update, adapt, check and confirm that the ingredients and quantities in the menus are adequate for inmates' many nationalities, cultures and religions.

Furthermore, in visits to the Centre by Supervisory Judges, Prosecutors, NGOs and political and police authorities, all have confirmed the reality and have spoken favourably of the quality and quantity of menus.

In the matter of hygiene, at both Centres foreigners are provided with toilet products when needed as a consequence of their natural use, and may use any they may have of their own: they are under no circumstances prevented from accessing the toilets at night provided that they previously call the service officer.

Paragraph 89 (Enlargement of the range of activities for foreigners in los CIEs)

The CPT recommends that the Spanish authorities introduce a series of activities for those interned in the CIEs. The longer they remain in the centre, the more developed the activities available should be.

The activities offered to interned foreigners are reading (little-used on inmates' initiative), a TV room and some board games. These activities are obviously not comparable with those a Prison is able to offer, because the period of stay is much shorter.

On this point, it can be said that the Centres have card packs, board games, ludo, chess and equipment for ball games. The recreation rooms have a television set and usually reading material and a library.

At the **Aluche CIE**, the activities available for leisure/handicrafts/workshops are in the hands of Red Cross Workers and Social Mediators and are highly varied: sports such as football, volleyball, basketball and badminton; board games: ludo, draughts, chess, dominoes, cards; handicrafts and workshops using recycled material, felt, needle and thread. Inmates are also provided with informative and recreational materials from a small library.

At the **Zona Franca CIE**, in addition to an ample library, there is television and all types of board games.

There is in addition specific provision in this matter in the working document for the drafting of new Regulations for the Centres whereby, outside the times specifically set for each activity, foreign interns may remain in the room set up for the purposes, which shall be equipped with the fittings necessary for rest and a TV receiver and, if the centre's financial resources permit, daily press, a library, board games or other recreational items

Paragraph 90 – 91 (Private medical examinations for foreigners in CIEs)

The CPT recommends that all medical examinations be conducted out of hearing – unless the doctor concerned requires otherwise in certain cases – and out of sight of non-sanitary personnel.

It also makes a number of observations on the Zona Franca Centre where it received accusations of alleged pressures by the police on the sanitary personnel not to dispense adequate medical treatment to inmates, two nurses apparently leaving the job for that reason. The CPT would be pleased to receive the Spanish authorities' observations on this matter.

It must initially be recalled that **medical examinations are always confidential and reserved, despite which this is compatible and is in fact combined with the duty assigned to the National Police to safeguard the security of foreigners in the CIE and of the sanitary personnel and to ensure peaceful coexistence and public order in the Centre**. Thus, in general and always adhering to the medical staff's instructions, if a police presence is

considered to be necessary it shall be provided in the manner least affecting the professional examination. During visits to the Medical Service at the **Zona Franca CIE**, a male or female police officer remains present for reasons of security and at the request of the professional personnel as it must be remembered that there have been examples of aggressive behaviour and threats against the service.

At this Centre, the Medical Service is provided by the company SERMEDES and no complaint has been received or has occurred until this date in respect of the medical care provided. Nurses follow only the instructions of the medical professional present, the only person who prescribes medication, and there has never been any interference in their work. Likewise, foreigners receive dental and gynaecological care or any other arising at the Hospital Clínico in Barcelona where they are referred for appropriate medical treatment or examination.

Concerning the **Aluche Centre in Madrid**, the Medical Service has a doctor during the morning every day of the year and a Nursing service from 08.00 am to 10.00 pm, year-round. At night, between 10.00 pm and 08:00 am, Samur provides an effective service quickly and efficiently. During the afternoon and evening, the Nursing Service attends to foreigners and, should a doctor be required, this is requested from the company responsible for healthcare in the C.I.E. or, if applicable, the patient is referred to the pertinent Hospital, depending on their pathology.

From all that, it is concluded that **no need is seen to increase the existing Medical Service, as there is already a fixed shift for normal consultations and a round-the-clock emergency service.**

Paragraph 92 (Psychological and psychiatric care for foreigners in CIEs)

The CPT recommends that measures be adopted to guarantee psychological and psychiatric care for persons held in CIEs.

The CIEs have a general medical team and a nursing service so that, should they decide that a foreigner held there must receive specialised care in any specific field throughout their stay the patient is, as already indicated, referred to the services of the Hospital concerned, thereby always safeguarding professional attention in any medical field (ophthalmology, orthopaedics, psychiatry ...).

Paragraph 93 (Training of police officers in the CIEs and the absence of visible arms)

The CPT recommends that measures be adopted for CIE personnel, mostly Police officers, to receive specific training in the development of their functions in the centres and interpersonal communication skills, and the personnel selected must be familiar with the inmates' different cultures and have at least linguistic capacities. In theory, they should have received training to recognise symptoms of reaction to stress in inmates and to take the appropriate measures.

Moreover, to promote good relations between staff and inmates, the CPT considers that officers should not carry visible truncheons in the centres.

The National Police is entrusted with maintaining security in the Internment Centre as one of its essential missions and which, for its correct implementation, requires that the personnel attached to the Corps should have the necessary and sufficient professional resources. **Thus police defence becomes an instrument in accordance with the law and provided for in the personal equipping of members of this Institution.**

On the other hand, the fact that the defences (“truncheons” as recorded in the note) are “visible” serves no other aim than that of carrying them as part of the uniform and if necessary to be able to react immediately should the situation so require, and always according to the parameters of proportionality as already explained in response to other sections of this report.

One important point may be recalled here: in terms of their regulatory definition – which is on the other hand “negative”, i.e. defining the Centres according to their “non-penitentiary” nature – there are **inevitable differences between the aims of a CIEs and a Prison**.

Thus, while prisoners in a Prison are serving a sentence for a certain period of time of greater or lesser length and are aware of the beneficial effects, in terms of their status, they may derive from adequate, equitable behaviour, on the contrary foreigners entering a CIE know – and on entry are informed to the effect – that their time there is limited (maximum 60 days) and that, at its end, irrespective of the duration depending on the formalities required in each case, they are to be repatriated, so that compliance with their obligations in the Centre generates no significant change concerning their repatriation. In fact, default on their duties in the Centre is not contemplated beyond the generic provision in Article 62 sexies of *Ley Orgánica 4/2000* of 11 January:

“In each CIE there will be Director responsible for its functioning, to those ends adopting the guidelines of the necessary organisations, coordinating and supervising their implementation. The Director shall also be responsible for adopting measures necessary to ensure order and correct coexistence among foreigners and guarantee compliance with their rights, and for the imposition of measures on inmates not respecting the rules of correct coexistence or the interior regime”.

Finally, relative to the training of National Police personnel, it must be explained that, from the very moment of admission to the Training School, all members aspiring to belong to this Institution are trained not just in aspects essentially linked to the concept of security but also in matters such as dealing with the public, languages, professional ethics and basic principles of action contained in *Ley Orgánica 2/1986* of 13 March, training which is also updated and assessed in the various courses imparted by the Training and Finishing Division of the National Police.

Moreover, as already indicated, according to that often-mentioned working document approving new Regulations for these Centres, the Training and Finishing Division within the **Directorate-General for the Police shall promote periodic and on-going training for police officers in the Centres’ service, in the subjects of human rights, security and prevention**.

It is also expressly established that the work of police officers in the Centre’s service shall adjust to the principles and standards of conduct put in place in *Ley Orgánica 2/1986* of 13 March on Law Enforcement Agencies and its enabling provisions. They shall especially observe correct treatment in their relations with inmates, guaranteeing integrity, dignity and impartiality in their actions and avoiding any abusive, arbitrary or discriminatory practice for reasons of origin, gender, religion or opinion or which involves physical or moral violence.

Paragraph 94 (Revision of the system of visits in the CIEs)

The CPT recommends that the Spanish authorities revise the system for the organisation of CIE visits, in particular redesigning visiting rooms to allow inmates to meet their families and friends in an open environment suitable for children (including a children’s play area). In addition, the time allowed for visits must be increased, to at least one hour per week.

In response to this recommendation, the following are the **visiting times** at the Centres referred to by the CPT in its report: in **Madrid** families are now able to spend a minimum of forty-five minutes visiting per day; in Barcelona, visits are daily from 05.00 pm to 07.00 pm, and are authorised at other times depending on the inmate's personal circumstances, at any time and in a room with no physical separation between inmate and visitor.

Also according to said working document, the Centre Management shall fix the weekdays, numbering at least two, and the times when an interned foreigner may receive visitors although, for duly justified reasons, such visits may be authorised other than on the days and at the times established. Notwithstanding the foregoing, the spouse, children and minor wards of foreigners not living with them in the CIE may communicate with them every day at visiting times.

Visits may not last less than 30 minutes except for reasons arising from the capacity of the spaces and visiting rooms, or for reasons of security which shall be notified to the inmates in writing and in reasoned form.

Likewise, right to privacy shall be guaranteed in the conduct of these communications which, except in case of a court decision to the contrary, shall take place under visual surveillance only.

Paragraph 95 (Revision of the system of registration of incidents in the CIEs)

The CPT recommends the adoption of appropriate measures to establish an adequate system of registration in the CIEs reflecting all incidents involving use of force or the resource of temporary isolation.

In response to this recommendation, reference must in the first place be made to the expression in that paragraph of the Report that “*Article 62 of LO 4/2000 authorises the Centre's Director to allow use of physical force and separate violently inmates from the rest of the centre (...)*”

It might be said that this expression **represents a misinterpretation of the content of Article 62. This precept does not at any time state that separation must necessarily be “violent”** but that, depending on the circumstances, such a decision may be taken to avoid other contrary and more dangerous “acts of violence”. That is quite different. It is undeniable that if the inmate subject to the measure does not accept it, minimum essential force must be used for its implementation. Such force shall however always be the necessary minimum and under no circumstances may be the measure be violent in itself.

As to the recommendation to adopt a register of these measures, it must be pointed out that, by legal requirement, their adoption is always notified immediately to the Judge who authorised the internment, meaning that there must necessarily be documentary record of the action. Furthermore, **this documentation remains both in the Centre's archives and in those of the Court receiving it.**

Paragraph 96 (Excessive coercive measures at the Barcelona CIE)

According to the CPT, it has received complaints from inmates that they have been subject to highly aggressive coercive measures (tied with straps to a bed in a cell used for temporary isolation) on the ground floor in the Zona Franca Centre. The CPT has dealt comprehensively with the question of means of constraint in prisons, particularly the practice of immobilising persons (see specifically Section E.3 below). The same guarantees must be applied in the CIEs.

It must be remembered that a **Centre for the Controlled Stay of Foreigners** can never be equated with a Prison, their spirit and aims being essentially different, so that **coercive measures, specifically immobilisation, are adopted with maximum possible guarantees, i.e.: only personal physical restraint or preventive separation are provided for; prior authorisation must be sought from the Director; it is reported immediately to the Judge; such measures shall be adopted only when no other, less injurious, is possible; finally, it may not amount to covert punishment and must in any event be proportional.**

To this must be added the fact that the measures referred to by the CPT on this point **may be adopted in specific cases only** (attempted escape, avoidance of injury of acts of violence, and preventing damage to facilities caused by resistance to Centre personnel).

All that, and especially the necessary immediate communication to the Judge who shall decide whether the measure shall remain in place, filters a proportionate system of last resort to which is added the no less essential guarantee of the existence of specific Courts monitoring respect for the Fundamental Rights of foreigners in the Centres, to hear their complaints and petitions.

Therefore, and in relation to the terms of paragraph 128 of the Committee's report, the following are the parameters not currently regulated and which are recommended: **a) immobilisation to be ordered by or notified immediately to a doctor; and b) for it to be recorded in a specific register.** Of these two, the former is the more far-reaching and in relation to which it can be pointed out that if, at the time of immobilisation or separation or as a consequence thereof the foreigner in the CIE has or declares that they have lesions, they are referred immediately to a doctor for evaluation and issue of a report on the lesions.

The new provisions provided for in the draft Regulation on **Centres for the Controlled Stay of Foreigners** expressly establish that **the Director may order use of means for personal physical restraint and for the inmate's preventive separation in an individual room solely in order to avoid acts of violence or injury to themselves or others, to prevent escape or damage to the Centre's installations and on resistance to the Centre's personnel in legitimate discharge of their function.** The means considered shall be used when there is no other less injurious procedure, during the strictly necessary time and, in any event, in proportion to the end pursued.

Adoption of these exceptional measures shall be ordered by the Centre's Director in a reasoned resolution setting out the facts or conduct which led to their use, and which shall be notified in advance in writing to the person concerned.

Similarly, should reasons of urgency not allow for their prior written notification, the measures described may be adopted immediately, verbally notifying the inmate concerned of the cause and the specific measure taken, then forthwith pronouncing the associated resolution referring to the terms in the previous paragraph.

The Director must immediate notify the judicial authority ordering the internment and the Stay Supervisory Judge of the start and finish of any coercive measure, detailing the facts which led to its adoption and the circumstances which may make it advisable to maintain it. The judge must order its continuation, modification or revocation as soon as possible.

Paragraph 97 (Improvement to the system for complaints of foreigners held in the CIEs)

El CPT recommends that the authorities improve the system of inmate complaints in the CIEs, taking account of the foregoing observations.

On this recommendation, it is pointed out that there are at present registers in the CIEs for Complaints filed, and suggestion boxes for inmates. Under the 22 February 1999 Order of the Ministry of the Prime Minister's Office, complaints must be registered and, in addition, an interview with the Centre's Director is a possibility.

However, the draft Regulation referred to above contains a provision in this respect **that, for adequate control and inspection of the Centres' activity, they shall have at least the following registration books:**

- A log of inmate Arrivals and Departures.
- A Transfer and Displacement Log.
- A Log of Visits.
- A Log for Register of Correspondence.
- A Petitions and Complaints Log.

On the other hand, **there is also provision for a Joint Evaluation and Monitoring Commission with the following functions among others:**

- a) Reception of any complaints, reports or proposals formulated by inmates, the personnel providing services or the Director of each Centre concerning deficiencies or improvements to services.
- b) Adoption of the measures required to respond to deficiencies detected in the provision of the different services or which may contribute to improve them.

Paragraph 98 (Enabling provisions for the new Foreigners' Act)

Reform of the Act in 2009 authorises judges to conduct inspections in the CIEs and to make it possible for non-governmental organisations to visit these centres. At the time of the visit, two years following reform of the Act, the regulatory enablement of the remits it contains is still being drafted. The CPT would wish to receive a copy of the enabling provisions once passed.

As already pointed out in a previous section, to fulfil the terms of Additional Provision Three of *Ley Orgánica 2/2009* of 11 December reforming *Ley Orgánica 4/2000* of 11 January on the Rights and Liberties of Foreigners in Spain, and their Social Integration, the Directorate-General for the Police has drawn up Draft Regulations on CIEs Internal Regime currently being processed and which will be made public in the coming months; following official publication, a copy will be delivered to the CPT.

On the other hand, the **new Foreigners Regulation** were passed recently in Spain in Royal Decree No. 557/2011 of 20 April, developing *Ley Orgánica 4/2000* of 11 January with its most recent modifications including that cited by the CPT. A copy of this document will be provided to the Committee as requested.

THE SECURITY FORCES AND CORPS IN CATALONIA

Paragraph 101 and 102 (Accusations of mistreatment by the Mossos d'Esquadra

The CPT received numerous accusations of mistreatment by the Mossos d'Esquadra in the form of kicks and punches to the head and body and truncheon blows to the body, normally when restraining the person once reduced and brought under control. Many accusations of mistreatment were also received, suffered by detainees in police stations. For all these reasons, the CPT considers it necessary to permanently supervise the way in which the Mossos d'Esquadra treat detainees, and recommends that the Catalan authorities issue a message of zero-tolerance of mistreatment at all levels.

The Mossos d'Esquadra constitute a democratic police force adapted to the new times and acting strictly in accordance with the law, guaranteeing the necessary security for the free exercise of people's rights and thereby complying with the responsibilities and obligations assigned to them in the current regulatory framework.

Respect for citizens and their rights constitutes one of the pillars upholding the action of this regional police force as set out in fact in Act 10/1994 of 11 July, on the Regional Government Police Force - Mossos d'Esquadra whose Rationale states that the Act is based on:

"Resolutions of the Parliamentary Assembly of the Council of Europe and the United Nations General Assembly particularly concerning the Declaration on the Police and the Code of Conduct for officers entrusted with compliance with the law, respectively. The principles arising from these guidelines are included in Ley Orgánica No. 2/1986 of 13 March, on Law Enforcement Agencies, and so are binding, without exception, on the members of all police collectives. According to Final Provision Two of the Act, the basic principles of action and the common statutory provisions put in place in Articles 5, 6, 7 and 8 of that Act apply directly to the Regional Government's Police Force.

The Police may not be above the law and so must adjust their conduct to the legal provisions, subject to the hierarchy and subordination within the Corps. The Police are also an indispensable collaborator with the Justice Administration which they must aid in the broadest sense within their possibilities. On the other hand, the respect the Police owe to the society to which they belong and from which their remit originates requires them to use coercive resources only in extreme situations and with scrupulous application of the principles of suitability, proportionality and congruence".

In addition, the Act defines the treatment the officers in the Police Corps must observe in relation to detainees when it states that:

"In this way, especially in the treatment of detainees, the Police shall strictly observe the provisions of the Act. On the other hand, members of the Mossos d'Esquadra shall behave completely professionally, with the limitations and sacrifices required to the benefit of the service they provide".

The legislation continues by defining the strategic lines of the Mossos d'Esquadra which, like any other Police Force, has the following:

"As its main mission and motto, protection according to the legal regulations, freedom and security of citizens. Thus its functions range from the protection of persons and property to the maintenance of public order."

The precepts set out in this Act have been and are the basis of the message the Mossos d' Esquadra transmits to officers from the moment when they enter the Public Security Institute of Catalonia in this organisation's on-going training, and in the drawing up of working standards ensuring that the system for action by officers is consistent.

In this same sense, **the adoption by this Police Corps of the criteria in Resolution INT/1828/2004 of 14 June approving the Instruction for the incorporation and application of the European Code of Police Ethics** relative to the action and intervention of the Mossos de Esquadra points to this body's commitment in favour of guaranteeing the rights of persons detained or in police custody.

Finally, **the implementation of the quality management System for the detention process constitutes a further decisive step in guaranteeing protection of the free exercise of liberties and the public security of persons, defining the commitment of the Mossos d'Esquadra to the quality of their services**, with the aim of ensuring their continuous improvement and the rapid detection and correction of conduct not in accordance with the law.

Paragraph 103 and 104 (Revision of the methods of the Mossos d'Esquadra, accountability and zero-tolerance of mistreatment)

The CPT considers it opportune to adopt measures to modify the modus operandi of the Mossos D'Esquadra in investigating accusations of mistreatment, and for the corresponding disciplinary measures to be taken.

Given the passivity in the exercise of disciplinary authority, the CPT believes that the Catalan authorities may be transmitting a message of impunity in relation to mistreatment. It feels that, as a minimum, police involved in criminal investigation for alleged mistreatment should be assigned throughout the criminal procedure to functions not involving direct contact with the public or with detainees.

The CPT would also like to receive information on the outcome of the criminal procedures motivated by the events of March 2009 concerning the accusation of abuse of force by the police during a demonstration at the University of Barcelona and in the case of the six police recorded on camera mistreating a detainee in the "Les Corts" Police Station in 2007.

In respect of the first recommendation, it is recalled that Chapter IV of Act No. 10/1994 of 11 July of the Mossos d'Esquadra defines the disciplinary regime applicable to members of that Corps.

Thus it establishes the disciplinary procedure and declares that sanctions may be imposed for serious or very serious faults only if pursuant to a procedure initiated for the purposes.

The precautionary measures the competent body may order include provisional suspension or assignment to another job, and which may be accompanied by provisional loss of uniform, the weapon and the credentials of the officer investigated or prosecuted.

These measures are applied in the light of an evaluation of the seriousness of the acts committed and the specific circumstances of each case.

The recommendation to assign officers investigated for alleged mistreatment to functions other than those determined by law without the procedural actions described above would represent a breach of the rule and of the key principle of the legal provisions to guarantee the presumption of innocence for all.

In relation to the request for information on the March 2009 events at Barcelona University, the Mossos d'Esquadra completed the internal investigations required of that action, none of which led to any subsequent disciplinary development in the absence of reasons for the initiation of such procedures.

As to the events at **Les Corts Police Station in 2007**, an extract is provided of the proven facts in the final sentence, and of the disciplinary sanction imposed on the Mossos d'Esquadra officers.

1. Proven facts from the final sentence.

On 28 February 2011, the Criminal Section of the Supreme Court handed down a ruling in the appeal brought against the ruling of Section VII of the Barcelona Provincial Court on 26 July 2010 sentencing various officers of the Mossos d'Esquadra as perpetrators of an offence of lesions legislated in Article 617.1 of the Criminal Code to a two month fine at a rate of ten euros per day each.

The section on the proven facts in the ruling reads literally as follows:

"ONE.- The court declares proven that on 31 March 2007 at about 6'30 hours, the Mossos d'Esquadra Patrol comprising the officers with Professional Identification Cards Numbers)0000(and)0000(went to the intersection of c/ Ávila and c/ Tánger in Barcelona at the request of Mr. J.P.V. who declared to them that he was being insulted and pushed by someone who eventually turned out to be R.P.M.

In this situation, said Mossos d'Esquadra Officers tried to identify Mr. R.P.M. who refused, so that, in compliance with the terms of Ley Orgánica 1/1992 of 21 February on Protection of Citizens' Security, they transferred him to the Mossos d'Esquadra Police Station at Sant Martí in Barcelona to complete the necessary formalities for his identification. In the police station, R.P.M.'s attitude and behaviour were aggressive and agitated and he went as far as to damage two police vehicles, struggling with said Officers while pushing them and insulting them with phrases such as "don't touch me son of a bitch" or "bastard Mossos", so the Officers arrested him for an alleged offence of assault which was declared an infraction in a final

Sentence of the Number 8 Examining Magistrate's Court of Barcelona on 1 April 2007.

R.P.M. was transferred as detainee to the Mossos d'Esquadra Comisaría in c/ de Travesera de les Corts also in Barcelona.

At approximately 8'15 hours on that same date, 31 March 2007, the defendant Corporal with Professional Identification Card No.)0000(ordered the detainee to be moved to the so-called registration or frisking Room prior to placing the detainee in a cell as established in the Mossos d'Esquadra action protocol. To do this, he ordered his subordinates, defendants with Professional Identification Cards Nos.)0000()0000(and)0000(to move the detainee to that Room, which they did. Once inside the Room, the detainee, R.P.M, continued in the same aggressive state as when he arrived and, at a given moment, gesticulating with his arms and confronting the defendants, touched Mosso nº)0000(so that the defendants, except for the Corporal with Professional Identification Card No.)0000(, leapt on the detainee and for a few seconds implemented reduction techniques involving blows with the feet and which ceased as soon as he was reduced on the floor, and then, while holding him, frisked him, taking off his shoes, laces and belts, in accordance with the police protocol until, after a few minutes, he was immobilised with shackles to the hands and feet and with a helmet on his head to prevent him from injuring himself, and he was transferred to the cell where his custody was taken over by another police detail.

As a result of the foregoing, R.P.M suffered a contusion to the left zygomatic arch and a contusion in the nasal area, an orbicular hematoma to the left eye and nasal pain and on the left arm and chest, requiring medical first aid and taking 14 days to recover during 5 of which he was prevented from carrying on his habitual occupation, with residual left infrascapular pain sequelae, and claiming any pertinent indemnification. There is no record that he lost consciousness as a consequence of the facts.

At 11.54 am on 31 March 2007, the defendants drew up a Police Draft on the detainee with file number 17758412007, reporting to the Judicial Authority that, at approximately 8.15 am, in the area of the search, detainee R.P.M.'s attitude continued to be aggressive, provocative and threatening, accompanied by sudden arm and head movements, slapping and proffering a kick to the knee of the Officer with Professional Identification Card No. XXXXX who was unable to avoid it, so that he was charged with a new offence of assault other than the initial one. As a consequence of the blow, Mosso XXXXX suffered contusions to the left knee and face".

2. Disciplinary sanction, a direct consequence of the final criminal ruling.

As a result of the judicial procedure and sentence, **it was decided that each of the officers of the Mossos d'Esquadra responsible for a serious disciplinary infraction** as provided for in Article 69 paragraph q) of Ley No. 10/1994 of 11 July of the Mossos d'Esquadra, should receive **a sanction of 1 month's suspension from functions and loss of the associated remuneration**, pursuant to Article 72, point a) paragraph two of that Act.

Paragraph 105 (Mossos d'Esquadra Code of Ethics)

The CPT wishes to be informed of the situation and content of the Mossos d'Esquadra Code of Ethics (which came into effect in 2010 but was subsequently suspended).

The Regional Government of Catalonia's Department of the Interior has appointed a working commission, currently engaged in drawing up the new Catalonia Police Ethical Code.

It is at the stage where the Draft Decree for Regulation of operation and organisation of the Catalonia Police Ethics Committee was recently submitted for public information.

Paragraph 106 (Information on police eviction and subsequent investigation of this incident occurring on 27 May 2011 in Plaza de Catalunya in Barcelona)

The CPT received information and photographic material on the police eviction of 27 May in Plaza de Catalunya and about the Regional Interior Minister's intention of conducting an investigation into it and into the report from the Síndic de Greuges (Catalan ombudsman).

It therefore recommended that steps be taken to ensure that all the Mossos d'Esquadra wear identification badges at all times and visibly while on duty.

Furthermore, it also wishes to be informed of the results of the internal investigation conducted by the Regional Department of Interior and of any measures taken to implement the recommendations made by the Ombudsman.

As regards identification of the *Mossos d'Esquadra*, it is indicated that, in order to empower citizens to identify members of the police, Decree 9412003, of 1 April introduced a new identification feature in certain parts of the uniforms worn by the *Mossos d'Esquadra*. This is a uniform identification item that must show the officer's professional identification number and is located on the piece of clothing of the upper body on the right.

Moreover, it can be said that the **Mossos d'Esquadra**, meets the requirement of making the identification number for each of its agents visible. However, it should be noted that in certain extreme situations, the agents have to take measures in self-defence in order to carry out their duties, such as wearing bulletproof vests which at times make it difficult to see the ID number.

In order to solve these situations of limited visibility, the Mossos d'Esquadra is thoroughly analyzing and assessing the different materials available and the different possible forms of identification in order to tackle the problem indicated by the Committee.

As for the results of the investigation conducted into the policing operation on 27 May, 2011, in breaking up the demonstration and occupation of Plaza de Catalunya in Barcelona, as well as the measures taken to implement the recommendations from the *Síndic de Greuges* in this regard, the following is noted:

Throughout 15 May, 2011, there were a series of crowds formed by citizens, not only in Catalonia but also in the rest of Spain, which resulted in a series of occupations by the "Indignados".

In Barcelona, the site chosen by this group for the occupation was Plaza de Catalunya in Barcelona.

The considerable amount of people who participated in this occupation and the activity generated by the crowd resulted in a build-up of rubbish and objects, some of which were particularly dangerous, such as certain gas bottles.

The large concentration of people in the daytime and the accumulation of about 300 to 400 staying overnight led to **hazardous health conditions** in the area that **made it necessary for cleaning services to work**.

Added to this situation, the possible **victory of FC Barcelona in the "Champions League" final of 28 May** was anticipated. The celebrations and activities associated with such events led to consideration being given to the **possible impact that such sports celebrations could have on the people occupying Plaza de Catalunya and on the rest of the citizenry**.

In this vein, **the actions as a whole initiated by the Mossos d'Esquadra were motivated by public health and security issues, intending to accompany the City Council's cleaning services, along with Barcelona local police, in order to clean and remove the hazardous, inflammable objects deposited in Plaza de Catalunya**.

Consequently, the objective pursued by this operation was none other than to eliminate risks to the safety of persons and property that may have resulted from the possible sports celebration in the occupied area in question.

The police operation began on 27 May at 06.54 am and ended at 01.40 pm the same day. A total of 240 police officers from the Mossos d'Esquadra took part and applied the action protocols established for such cases.

Considering all of the above, the **Directorate-General for the Police affirms and defends the actions by the Mossos d'Esquadra in terms of their legality, aimed at all times at ensuring the right to assembly, as evidenced by the fact that, once the hazardous objects were removed, the crowd assembled again**.

Therefore, it can be concluded that the police procedures implemented strictly followed the legal requisites in force, first using all avenues of management before initiating the procedure for the progressive use of force. These are the terms expressed by the Examining Magistrate's Court No. 4 of Barcelona in its interlocutory.

As regards the **suggestions made by the *Síndic de Greuges***, all of these are discussed below as well as the reply given to each one by the Catalan Regional Interior Department.

1. - Regarding the exercise of the right to demonstrate, the Administrations must act with proper balance within the criteria of proportionality so that their complainants are not considered to be limited in these rights.

2.-The City Council has to take a more active role in preventing unwanted incidents or degradation of public space, and to ensure that protest occupations are located in suitable conditions to exercise the right of assembly, and also to preserve the exercise of rights, which implies common use of streets and squares by the rest of the citizenry. The areas where the occupations occurred are public property and under municipal jurisdiction, and the City Council has to ensure there are objective conditions for general, harmonious, common use of these areas by people.

Spontaneous crowds that linger over time are an expression of the right of assembly that require a more proactive attitude from the authorities concerned. The latter have to exercise their respective powers and adopt the appropriate means to enable the free exercise of the right to demonstrate and to protect publicly-owned rights and property.

3. - We suggest analyzing and improving the planning mechanisms for police deployments and also their ability to give a coherent and effective response to social protests. These responses should differ depending on whether the demonstrators respect the principles of active nonviolence (passive resistance, disobedience etc.) or if expressions and actions of physical violence appear (assault, detentions etc.).

The Mossos d'Esquadra is committed to continuous improvement in its services, which enables it to assess the tools, resources and procedures it uses in handling security, perfecting them and introducing the necessary measures to ensure a professional service committed to excellence in policing.

All of the standard operating procedures of the Mossos d'Esquadra regarding crowds and demonstrations apply the regulations in force, ensuring the safety of people and the free exercise of their rights.

In the same vein, the **Directorate General for the Police recently carried out a restructuring of its organization by means of Decree 41512011 of 13 December on the structure of police functioning of the Directorate General for the Police in order to adapt it to the powers provided by the Catalan Statute of Autonomy and to thereby respond to the challenges and demands that Catalan society poses for the Mossos d'Esquadra.**

In this vein, the **General Commissariat of Institutional Relations, Prevention and Mediation** has been created, whose functions include fostering mediation and alternative ways of resolving disputes in order to encourage satisfactory solutions from the point of view of the final result and the means by which they are achieved.

To this end, the **Mediation, Negotiation and Corporate Social Responsibility Area has been created as a body responsible for preventing social conflicts and fostering safety for citizens through positive conflict management**, taking part in diagnosing the causes and reasons for the conflict.

The Directorate General for the Police is grateful for any thoughts which, like these, encourage further work in the same direction.

4. - The Directorate-General for the Police, in collaboration with the Catalan Institute of Public Security, should review the specific training of officers selected to form part of the Mobile Brigade (BR/MO), and also of agents from the Operational Resources Regional Area (ARRO in Spanish). The proper training of agents, as required by law and jurisprudence, is an essential mechanism that must be extended.

The Directorate-General for the Police has a training system that trains its agents to professionally carry out the skills and authority assigned to them by law. In addition, in order to improve the quality of this training system, the Interior Department agreed to promote a new framework for training, expertise and development, **setting up the Catalan Institute of Public Security as a centre of excellence in knowledge in which to instil a comprehensive culture among the various security and emergency forces, launching a specialist training plan to promote this in keeping with professional qualifications and university credits.**

The different training programmes provided by the Directorate-General for the Police are designed taking into account all the educational and regulatory requirements involved in drawing them up, and which lead to an effective, efficient training system through which the Mossos d'Esquadra have been deployed with proven success throughout Catalonia.

Nevertheless, the evolution of society means that the plans must be adapted to new requirements. The Directorate General for the Police thus works continuously on refining and reviewing them, identifying and incorporating the features and accumulated experience that enrich and help to improve the quality of their services.

5. - The Interior Department must assess all the information it has available if there have been improper actions and disproportionate use of physical force by members of the Mossos d'Esquadra. Where necessary and appropriate, we suggest opening disciplinary proceedings to prevent impunity for these practices. The Mossos d'Esquadra must always adapt their actions to a proportionate use of physical force and also of the means used for protection, restraint and defence in their actions.

Article 11 of Act 10/1994 on the Mossos d'Esquadra, on the principles for action, stipulates that all action and measures taken by the Mossos d'Esquadra must comply with the principles of congruence, opportunity and proportionality.

To ensure compliance with this obligation, the Mossos d'Esquadra have established internal procedures to identify, evaluate and, if necessary, sanction behaviour that deviates from the strict application of the relevant regulations.

In this vein, in addition to the legislative context that must be adhered to and which is common to all citizens, the Mossos d'Esquadra are subject to internal disciplinary procedures that reinforce the strict control exercised by the Regional Police over its members and their behaviour.

6. The law requiring all members of the Mossos d'Esquadra to be visibly identifiable must be applied (Act 101/1994, of 11 July, on the Mossos d'Esquadra, and Decree 21712008 of 4 November on the use of the professional identification number on certain items of the uniforms of the Mossos d'Esquadra). Regarding this issue, the Sindic (ombudsman) is aware that a study is being carried out to define materials with which to identify the officers without compromising their safety and also to establish areas where the required number can be printed for when the officers have to wear Duo vests. It suggests to the Directorate-General for the Police that the study should reach the appropriate conclusions no later than three months as of the date of this ex officio action and that these findings be applied without exception no later than 1st January, 2012.

The Directorate-General for the Police is aware of the need to facilitate the visibility of the different professional identity cards in some units in very specific circumstances. In some situations of danger to the personal safety of the officers of certain units, they are forced to take protective action that, once implemented, hinders citizens' easy access to the agents' professional identity.

As noted earlier in this report, the aforementioned body has been carrying out studies and assessments for some time to determine what materials to use and where the respective professional identity cards should be positioned.

It should also be remembered that the situations requiring protective measures to be used by the Mossos d'Esquadra are very diverse. They include contexts such as the presence of fire or hazardous substances - situations that require materials to be chosen that ensure resistance to these extreme situations and are in no way conducive to the possible injury of officers.

7. - We suggest that the Mossos d'Esquadra and Barcelona local police have a group of people trained and qualified to carry out mediation for prevention and as an alternative means to the use of force. Police mediation and alternative dispute resolution should be part of the renewed security model that the regional department head Felip Puig gave to the Parliament and may contribute to the necessary balance of Administrations) as regards their responsibility to accept the right of expression and assembly, and to protect the rights and property of third parties.

In the same vein, the Directorate-General for the Police recently restructured its organization in keeping with Decree 41512011 of 13 December on the structure of policing functioning of the Directorate-General for the Police, in order to adapt it to the requisites corresponding to the consolidation stage of the Mossos d'Esquadra and the Catalan police system.

In this restructuring, the Directorate-General for the Police promoted the creation of a Mediation, Negotiation and Corporate Social Responsibility Area in order to strengthen the capabilities and resources available to the Mossos d'Esquadra in the field of conflict management.

Specifically, **some of the functions of the Mediation, Negotiation and Corporate Social Responsibility Area** are:

- To prevent social conflicts and foster safety for citizens through positive conflict management, taking part in diagnosing the causes and reasons for the conflict.
- To promote civic behaviour conducive to good coexistence in situations of particular social relevance determined by the Directorate-General.
- To solve the different parties' problems through mediation, establishing ties and improving citizens' coexistence in order to avoid disturbances.

- To identify, propose and promote activities in the field of corporate social responsibility, especially in the field of ethics as regards the proper use of human and material resources, and environmental preservation.

In this regard, the Directorate-General for the Police is also responding to the commitment to strengthen the resources and capabilities in the field of mediation for the Mossos d'Esquadra as a whole, creating the structure, resources and organization with which to achieve this.

8. - We suggest that a protocol for coordination and appropriate command in joint operations is established between Barcelona local police and the Mossos d'Esquadra within six months. The purpose of this protocol is to avoid a lack of coordination as a result of frictions that endanger the progress of operations and which lead to a breach of the principles of "congruence, proportionality and opportunity" stipulated in Article 5.2 of Ley Orgánica 2/1986 of 13 March on Law Enforcement Agencies and 11.1.3 (b) of Act 10/1994 of 11 July on the Mossos d'Esquadra.

The Mossos d'Esquadra regularly and continuously works with Barcelona local police and other local police forces in different areas of security management through the various operational coordination committees that enable local security boards to manage the operative coordination and cooperation of the various security forces and services in the municipal sphere.

In this regard, Act 4/2003, of 7 April on public security regulations for the Catalan public security system provides the regional police with the instruments and coordinating and participative bodies necessary to address this task of cooperation that is overseen by the comprehensive management of the country's different security needs.

In the context of collaboration created by the regulatory provisions in force, the Mossos d'Esquadra have worked intensively with the Barcelona local police in drawing up many coordination plans for different areas of security, all of which aim to ensure people's security and that they can freely exercise their rights.

Some examples of this collaboration are the security deployments in the metropolitan public transport network and the daily management by the Barcelona Regional Chamber of Command (*Sala Regional de Comandament de Barcelona*), where members from the two police forces deal with the different security needs that appear.

Although there may be continual collaboration between the Mossos d'Esquadra and the other security bodies and services, **the considerations and needs expressed in this suggestion will be passed on to the Operational Coordination Committee to be taken into consideration in drawing up the next coordination plans and in the update procedures for the existing ones.**

Paragraph 107 (Use of projectile-shooting weapons by the Mossos d'Esquadra)

The CPT would welcome comments from the Catalan authorities in connection with the use of projectile-shooting weapons by police, whether they are subject to the regulation of firearms, whether their use is regulated and controlled, whether the police who use them have been previously selected and trained for this purpose, and whether the persons who have used said projectiles have undergone medical examination. In other words, the CPT would like to know if an a posteriori evaluation has been drawn up after each incident in which such weapons have been used.

Specifically, the CPT seems to refer to the legal and regulatory coverage for the **LL-06 Single Shot Weapon used by the Mossos d'Esquadra**, in so far as it resembles a firearm. It would also be interesting to know if any studies or assessments have been made on the effects and consequences of its use after the incidents in which such projectiles have been used.

After assessment, the Mossos d'Esquadra acquired GL-06 Single Shot Launchers **to tackle certain situations of serious disturbance in public order, all of which are perfectly defined in standard regulations and operating procedures**.

Their use is decided upon when there is a serious disturbance of public order, in particular danger to people and property. Under no circumstances can they be used without an express order from the head of the operation, who must previously inform the head of the deployment.

The regulations for use of these launchers take into account variables such as the number of participants in the crowd, the balance of power between this number and the officers acting, the intensity of the conflict resulting from the gathering, the radical nature or potential for violence of the participants, the precedents from previous gatherings by the same organisers, and the place or environs where the gathering takes place.

In situations defined by the regulations, use of this tool enables the crowd to be broken up, fractions scattered, and the area to be evacuated. It also prevents it from gathering again, thus avoiding a situation that may endanger the safety of persons and property.

Using this tool helps the Mossos d'Esquadra to handle in a less harmful way the different extreme situations that threaten the safety of persons and property.

In addition, Instruction 8/2008 of 13 June on broadening the scope of Instruction 4/2008 of 11 March on the use of weapons and tools for police use includes the provision of a "40 mm launcher or similar device designed specifically to shoot and project non-lethal ammunition".

1. Safeguards against abuse

Paragraph 109 (Notification of communication about arrest to a relative designated by the detainee)

As regards notification of custody, the CPT recommends adopting appropriate measures to ensure that all persons exercising their right to communicate the fact they have been arrested are subsequently informed of whether the communication with a close family member or other person specified by the detainee has indeed been carried out.

The Mossos d'Esquadra incorporated the very procedure for arrest into the Quality Management System designing the tools and procedures necessary to monitor and ensure proper assistance for the detainee.

Within the procedure for arrest, when a person exercises their right to communication and requests that their arrest be communicated to a third person, the Mossos d'Esquadra carries out the communication and records its existence in the appropriate police report as well as in the corresponding computer record.

Furthermore, the person arrested is informed verbally that the communication has been made.

Paragraph 110 (Detainees' legal counsel)

The CPT recommends that the Catalan authorities take appropriate measures to ensure that requests for legal aid from detainees are promptly met in all cases and that the interested parties can exercise the right to meet privately with their lawyer.

In addition, the CPT wishes to have confirmation that the detainees, in practice, have the right to be assisted by the lawyer of their choice if a detainee indicates a particular lawyer. Recourse should only be made to the Bar Association if it is not possible to get in touch with the requested lawyer.

The Mossos d'Esquadra complies with all the legal requirements governing the process of arrest and activates the public counsel services when so defined by law. Thus, it **complies with the rules of criminal procedure as regards the arrest process, with particular reference to the right of detainees to designate a lawyer, and, if they do not do so, to appoint a duty solicitor.**

Paragraph 111 (Detainees' general access to a doctor)

The CPT recommends measures be taken to improve detainees' access to the aid of a doctor, in line with previous observations in ALL police stations.

The Mossos d'Esquadra incorporated the very procedure for detention into the Quality Management System designing the tools and procedures necessary to monitor and ensure proper assistance for the detained person.

Within the procedure for arrest, the presentation of those detained in the Barcelona Metropolitan Police Region's Detainee Custody Area is a priority as of the very moment the arrest is carried out in practice.

The only exception to this rule is for urgent medical visits and cases where the detainee, immediately upon arrest and being informed of his/her rights, asks to be seen by a doctor.

In addition, when a detainee requires primary medical care, he/she is led to the Les Corts Custody Area if this occurs within the medical assistance service's hours. Outside these hours, and for doctors' visits that require more detailed exploration or intervention, the detainee is to be brought directly to a hospital premises.

Finally, it is noted that demands regarding the transfer of a detainee for medical care are considered to be a priority in terms of both dealing with the demand and in carrying it out.

Paragraph 112 (Privacy for the detainee's medical examination)

The CPT reiterates its recommendation for measures to ensure that all medical examinations are done out of the reach of the police staff, unless the doctor concerned expressly requests otherwise.

In the case of medical examinations of detainees, the situations created are complex and mostly require an assessment to allow balanced solutions to be found.

However, one must remember that if the security management so requires, the acting officers must take the appropriate measures to ensure the physical integrity of the medical staff, the detainee and others present.

Paragraph 113 (Information pamphlet on the detainee's rights)

The CPT reiterates its recommendation for measures to ensure that detainees be provided with a copy of the information pamphlet in a language they understand.

In this context, this means that the Mossos d'Esquadra must inform the detainees in writing of the rights they have in the language they normally use (written documentation available in over 20 languages), or, failing this, in one that they can understand.

2. Conditions of detention

Paragraph 114 (Material conditions in detention areas)

In general, the CPT understands that the detention areas were always in the basements of buildings.

The structural layout of the police stations is designed to meet the police force's needs regarding security and responsibility as regards the detainee.

In all police stations, the sanitary conditions are correct and cleaning services are available to ensure proper maintenance.

Paragraphs 115 and 116 (Deficiencies in Catalan Police Stations)

The CPT again found deficiencies in the "Les Corts" police station, described in the report on the 2007 visit. The Hospitalet and Badalona police stations had nine cells each. In general, most of the deficiencies found in "Les Corts" were also found in other stations. The Granollers one, which had basement cells, had similar defects. Unfortunately, the Juvenile Detention Area in the City of Justice (Ciudad de la Justicia) was also in the basement of the building. It had nine cells, three of which were intended for restive minors and contained only one bench. In summary, the main deficiencies found on the Mossos d'Esquadra's premises concerned the lack of natural light and inadequate artificial lighting, poor ventilation, inadequate availability of drinking water and means of personal hygiene, as well as a lack of open areas for exercise. These are the same shortcomings highlighted in the 2007 report. The CPT reiterates its recommendation to the Catalan authorities to adopt measures to correct these faults.

The CPT also recommends that the Catalan authorities set standards for police detention facilities, taking into account the Committee's criteria. In particular, as regards detention areas in modern police stations built ad hoc, daylight should be ensured as well as adequate ventilation, and there should be an outdoor exercise yard.

In their internal processes for improvement, the Mossos d'Esquadra include all the considerations and thoughts that may help improve their services. In this vein, they also incorporate the CPT's findings provided they are compatible with the security standards defined for police premises of the Directorate-General for the Police.

PRISONS IN CATALONIA

Preliminary considerations

At the outset, it should be noted that the scope of the Catalan Prison Administration supervises the Inspectorate of the General Directorate of Prison Services under the Department of Justice of the Catalan Government and the Interior Ministry's General Secretariat for Prisons.

Moreover, as in the case of the Prison Administration answering directly to the Ministry of the Interior, there are other mechanisms for monitoring and control. There are internal control mechanisms (professional specialists in the Prisons' Treatment Boards and external ones. The latter are covered by the Ombudsman in its capacity as MNPT, and the newly created Catalan Authority for the Prevention of Torture, in keeping with the provisions of Article 17 of the optional Protocol of the Convention against torture and other cruel, inhumane or degrading treatment (Article 17 stipulates that in decentralized states, various prevention mechanisms can be designated).

Paragraphs 117 and 119 (Overpopulation in Catalan prisons)

The CPT recommends adopting a multidisciplinary approach to address the problem of overpopulation in Catalan prisons and demands that updated information be submitted on the measures taken. It further notes that the La Modelo Prison (Barcelona) still has prison overcrowding problems.

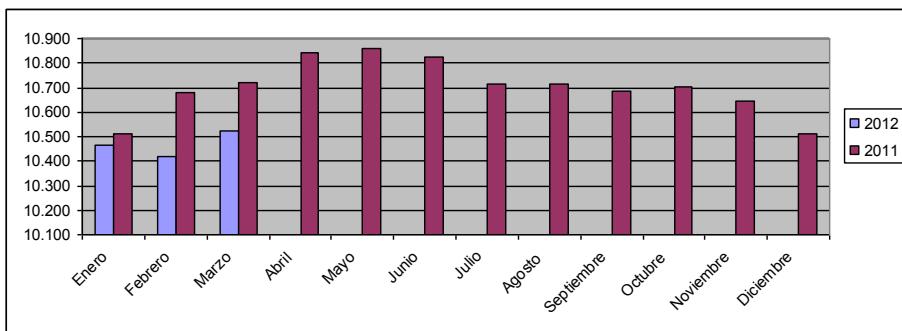
The year 2011 ended with a population of ten thousand five hundred and thirteen inmates in prisons in Catalonia. This number is almost the same as in late 2010 and 2009 (10,520 and 10,525 respectively). Therefore, the prison population has not grown in the past two years despite the forecasts made in 2008, which predicted a population of twelve thousand inmates by 2012.

Given the complexity of social and criminal variables that affect this situation, and that the turnaround period is still short for making generalizations, one cannot provide a definitive explanation for the halted growth of the last decade. However, there are some factors that may have had an influence on containing the growth.

Firstly, in late 2010 a partial reform of the Criminal Code was approved (by Act 5/2010 of 22 June, which amends *Ley Orgánica 10/1995* of 23 November on the Criminal Code) that, among other factors, led to the reduction of the maximum sentences for some crimes against public health. Since this type of crime leads to the incarceration of 38% of the foreign inmates and 20% of the Spanish, the reform has had an effect that will last over the coming years and which explains, to a limited extent, the slowdown that has occurred. Thus, the percentage of inmates for crimes against public health has been reduced by 1.79% (185 fewer inmates for this offence) over the last two years.

On the other hand, the foreign incarcerated population has continued to increase over the past two years, reaching 45.83% of the total incarcerated population in Catalonia in 2011. However, this increase, which had seen an average of three hundred and thirty-eight more foreign inmates every year as of 2000, fell to an average increase of one hundred and twenty-four inmates over 2010 and 2011.

In short, this slowdown has meant that the prison population has grown less in recent years. This is illustrated graphically below:



The action undertaken by the Directorate-General for Prisons is geared towards two areas:

A) On one hand, it deals with **modernising, replacing and building new prison facilities** to expand the system's capacity to respond in good conditions to the demand for places in the prisons and to close down old facilities that have become obsolete for implementing criminal sentences.

The Directorate General for Prisons is currently preparing a Plan for prison facilities for the 2011-2018 period (this is a revision and update of an earlier plan originally drawn up in 2004), adjusted to the current economic situation and the future projections for growth in the incarcerated population.

In the last five years, three new penal complexes have been prepared in Catalonia (Brians 2 Prison in 2007, a Youth Offenders Institute in 2008, and Lledoners Prison in 2008), which has resulted in an increase of nearly three thousand places.

The Department of Justice is working for two new prisons to become operational as soon as possible, depending on available funding: the Puig de Les Basses Prison, which will replace the old prisons of Girona and Figueres, with a capacity of a thousand inmates, and the Mas d'Enric Prison (in the municipal area of El Catllar, Tarragona) to replace Tarragona Prison and which also provides a thousand additional places.

Thus, the Catalan prison system will prepare two thousand more places and, with the decommissioning of the old prisons, only four hundred and eighty places will have been eliminated (two hundred and thirty-seven at the prison of Tarragona, ninety at the Figueres prison, and a hundred and fifty at the Girona prison).

B) On the other hand, **a prison policy is promoted that fosters grade 3 sentences (open prison, day release etc.), parole and alternative measures to prison.**

This set of measures in the short, medium and long term is intended to alleviate the overcrowding in the La Modelo Prison in Barcelona, whose incarcerated population has been stabilized at around eight hundred people since 2011, following a period when the recorded numbers exceeded two thousand people (2004-2008).

Paragraph 121 (Allegations of abuse regarding a specific inmate)

The CPT wishes to receive information about the investigation into allegations of abuse against an inmate at the Special Department of the Lledoners Prison at 10.00 am on 5 September, 2011.xxx

The inmate in question is J.M.E. According to the findings of the Inspectorate of the General Directorate of Prison Services of the Catalonia's Department of Justice, the following actions have been taken:

1. All the documentation of classified information has been submitted to the Examining Magistrate's Court No. 5 of Manresa, which instructs the Preliminary Proceedings No. 716/2011, in case the administrative proceedings carried out following the incident may constitute an offence.
2. Disciplinary proceedings have begun on the head of the internal service unit at the Lledoners Prison (with professional identification number 1184), for "his inappropriate, improvised and disproportionate actions" in relation to the incident brought about by the inmate.
3. A review of the protocols has been proposed for greater involvement of service's heads in controlling and supervising inmates being restrained with the aim of strengthening assurances as regards protecting the inmates' fundamental rights and respect for their human dignity while they are being restrained.
4. It has been proposed that the specialised unit coordinator should intensify ongoing training of staff assigned to the special department in relation to restraining and monitoring inmates, and to the procedure to be followed for cases of coercive methods.

Paragraph 123 (Medical examinations in applying coercive methods)

The CPT reiterates its recommendation for measures to ensure that medical examinations of prisoners who have been subjected to any coercive action are conducted in accordance with the requirements stated by the CPT.

According to the CPT, the following three points should be respected when carrying out such examinations:

- a) Only medical staff should carry them out, without police present.
- b) The results of the examination must be documented and made available to the inmate and his/her lawyer.
- c) When allegations of abuse are directly related to the findings of the medical examination, this shall be reported to the appropriate authority.

Thus, **medical examinations are to be performed prior to entry into the Prison, and before applying coercive or solitary confinement methods.** These actions are to be carried out **by the medical team with full guarantees** in order to protect the patient's right to privacy and ensure confidentiality, provided this does not pose a security risk or endanger the physical integrity of the medical staff.

Also, **the prisons' medical staff are required and advised to record** the injuries they have been able to verify in the **inmate's medical history**. They must issue a statement or report on the injuries which includes, in addition to the temporary data and identification of the person concerned, a detailed topographical description of the injury, its prognosis, the inmate's general condition at the time of the visit or medical examination, the cause of the injury according to the statement by the person affected, and the medical aid that he/she has been given.

Finally, in accordance with the provisions of Article 85 of the Rules of Organization and Operation of sentence enforcement services in Catalonia, each inmate's relatives, legal representatives or related persons are entitled to be given information about the aid received in accordance with the provisions in the regulations pertaining to the rights to information related to the patient's health, autonomy and medical documentation.

Paragraphs 124-128 (Restraining rules)

The CPT reiterates its recommendation to the Catalan authorities to take measures to ensure the implementation of all the principles and basic guarantees listed above in prisons that resort to restraining inmates.

As mentioned above in this report, Article 45 of *Ley Orgánica 1/1979* of 26 September and Articles 71, 72 and 188 of the Prisons Regulation provide a framework and limits that should apply to any use of restraining methods at any time (as of beginning use of the method until this ends). This includes:

- Teleological limit: coercive means are justified for a specific, exceptional purpose and are to be used only for restoring normality.
- Methodical limit: the use of coercive means must observe the principles of necessity and proportionality, and the principle of opportunity.
- Time limit: the use of coercive means may last only as long as is strictly necessary.
- Statutory limit: the use of coercive means must always observe the fundamental rights of prisoners subjected to these measures.

Furthermore, Article 72.3 of the Prisons Regulation adds that "*the use of coercive means shall be previously authorized by the Governor, unless urgent reasons do not permit this, in which case (s)he shall be notified immediately. The Governor shall immediately inform the Sentence Enforcement Judge about the adoption and termination of the restraining action, detailing the facts that may have led to such action and the circumstances that may have made it advisable to maintain them (...)*".

Moreover, taking into account the possible repercussions that the use of restraint may have on inmates' fundamental rights, on the safety of the incarcerated population and on the good order in prisons, the **Prison Administration of the Catalan Regional Government has dictated various circulars and instructions that deal with the regulatory provisions above in order to explain how methods of restraint must be applied and how to use means of fixation**, the controls on their application and the supervision of people subjected to the measures. Due to their importance in this area, said operating rules are worth noting:

- Circular 6/2004, of 3 December, on the procedure for action and observations after using coercive methods and on the basic guidelines for using security means made up of individual and intervention equipment.
- Circular 2/2007, of 18 October, regulating the mechanical procedure for restraint.
- Circular 3/2004, of 29 November, on the procedure for action in situations of sudden aggression from patients admitted to psychiatric units.
- Circular 2/2010, of 1 June, on adapting prisons and equipment for enforcing prison sentences to the Department of Justice's video surveillance protocol.

Circular 3/2004 of 29 November develops the provisions established in article 188 of the Prisons Regulation as regards the regime in psychiatric establishments or units, and stipulates that in exceptional situations of aggression from patients in psychiatric units, the mechanical restraint measure may be applied within reason, but may only be authorised by the establishment's psychiatrist or doctor.

As a general principle, it is expected that the restraint will be carried out observing the integrity and dignity of the incarcerated persons, specifically prohibiting forced or degrading positions, and attempting to make it as little uncomfortable or irritating as possible. The preferable restraint position is ventral decubitus (prone) in order to prevent them from inhaling vomit or attempting to harm themselves by voluntarily hitting themselves against the bed's headboard. Furthermore, Circular 3/2004 of 29 November says that intoxicated persons or those with fluctuating consciousness should be placed in the left lateral decubitus position. In any case, the mandatory medical examination immediately after the restraint or the follow-up controls or supervision will verify that the position is the most suitable.

The **other aforementioned Circulars account for mandatory controls to be applied and supervision of inmates subject to the restraint measures**, which will be continuously carried out and coordinated by professionals, at most within the set periods established, recording the fact that they have been carried out. These periods are as follows:

- a) For psychiatric restraint: on the one hand, the medical staff shall check on the restrained person within two hours of having restrained him/her and thereafter every four hours. In addition, the psychiatrist or doctor shall check on the situation of the restrained person every six hours. On the other hand, professionals working inside the prison shall check on the restrained person every two hours.
- b) For other kinds of restraint, a medical supervision and check-up shall always be carried out every two hours after applying the restraint and thereafter every four hours. Also, the head of the unit and, if necessary, officers on duty in the unit, shall check on the restrained person every thirty minutes. Before the end of his/her shift, the coordinator of the special department or the closed regime complex and, in his/her absence, the Head of Services shall carry out this supervision and check-up, and submit a report to the Directorate about the grounds that warrant the measure being kept or removed. If twelve hours have elapsed since the restraint began and none of the reports recommend ending the measure, the governor will determine the course of action to be taken.

The application, maintenance or removal of any coercive means, including restraint, as provided for in Article 72 of the Prisons Regulations, is to be immediately communicated to the Sentence Enforcement Judge, one of whose purposes is to safeguard the rights of inmates and to correct abuses and deviations that may occur in complying with the precepts of the prison regime. Obviously, the documentation is recorded and attached to the internal staff member's personal file.

Furthermore, it should be noted that an **additional guarantee is provided by recording, preserving and storing images in places where the coercive measures are applied**. In Catalan prisons, video surveillance is regulated by a unified protocol for all facilities, referred to in Circular 2/2010 of 1 June, the spirit of which lies in the provisions of Article 18 of the Constitution, which recognizes people's right to privacy and their own image. The necessary surveillance mechanisms that are compatible with constitutional rights have therefore been put in place in prisons. In keeping with the aforementioned protocol, the ultimate purpose of these mechanisms is to prevent risks to people's physical and mental integrity, whether they be incarcerated people or officials. At present, distinctions must be made between:

- a) The two penitentiary complexes considered to be new - *Lledoners*, the Youth Offenders Institute and the future *Puig de les Basses* and *Mas d'Enric* complexes, which have and will have extensive security coverage via video surveillance.
- b) The older complexes that will continue operational (Brians 1, Poniente, Cuatro Caminos, and Brians 2), which are being progressively adapted to the internal regulations governing this area, within the available budget.
- c) The old complexes that are to disappear (Model, Wad-ras, Tarragona, Figueres,

Girona and the open complexes in Barcelona), in which the minimum measures will be taken to ensure security in terms of video surveillance, taking into account that these facilities will be phased out in the short and medium term.

In any case, as a general rule there are video surveillance systems in all areas where inmates and workers interact (common areas) in all the prisons except those where, as a rule, the use of this system is not allowed: private communication rooms, doctors' surgeries, toilets and ordinary cells.

Moreover, it must be added that in each and every room set up as a retaining or solitary confinement cell unit, there is video surveillance. In addition, the 'spaces' where these technological security systems are installed are visually indicated according to the Circular's guidelines.

The recording, storage and retrieval of images is carried out in its entirety, i.e. from moment the incident or behaviour in question begins until it ends, which includes the measures of coercion or retention taken.

As regards access to images of incarcerated persons in the context of a disciplinary procedure, the provisions of the protocol arising from Circular 2/2010, of 1 June (which is a compendium of existing laws in the matter), are to be strictly applied. It is stipulated that the images are to be kept for a maximum period of one month, except for those that have recorded behaviour and/or situations that may be construed to be crimes, offences or administrative violations, in which case the files are stored for delivery to the judicial or administrative (government) authority or the public prosecutor.

Finally, it should be noted that restraint is to be used only in very exceptional circumstances: three hundred and ninety-seven cases in 2010, meaning 1.43% of the total incarcerated prison population in that year in Catalonia, which exceeded twenty thousand inmates.

Paragraph 129 (Treatment of inmates in the context of use of means of coercion)

The CPT recommends putting an end to the practice of delivering medication by force to inmates subjected to restraint. Only in exceptional cases, when the inmate's health is in serious danger, should this measure be adopted as part of a more general policy of carefully applied containment, incorporating the necessary guarantees. In any case, the inmate shall be informed of the purpose and effects of the medication.

Persons in need of care, regardless of their psychopathological condition, are to be regarded with the utmost dignity and as individuals with all the rights and duties legally applicable to them. In using coercion, containment or other restrictions of whatever nature that it is necessary to apply due to the inmate's psychopathological state, one should always observe the provisions of the law (cited above) and, under all circumstances, it should be carried out in keeping with a professional context, following protocol and under control.

That said, it should be noted that in the prison context there is a high prevalence of comorbidity (presence of one or more disorders or diseases). Indeed, it is common for cases of classic mental disorders to coexist (schizophrenia, psychosis, bipolar depressive hypomanias) with disorders deriving from their multiple drug addictions. This is compounded by the high percentage of inmates with behavioural disorders reactive to their situation in prison.

This leads to the rate of prescription of psychotropic drugs in prisons being high. However, one must consider that the mental health specialists involved in prisons are professionals from the public hospital system operating with the same criteria in force for drug prescriptions in society outside.

Finally, it should be added that in our country the predominant psychiatric methodology is biological, which differs substantially from the one carried out by social psychiatry.

Paragraph 131 (Material conditions of cells in special departments)

The CPT stresses the poor conditions of the Brians I special units (for men and women) and those of the La Modelo Prison are still basically the same as those described in the report on the 2007 visit. In the Brians I complex the cells were adequate, but the cells in the La Modelo Prison were dirty and in appalling conditions.

The recommendation made is gratefully acknowledged and it is pointed out that steps have been taken to remedy the situation.

Paragraphs 132 to 134 (Regime for departments - closed or special)

As regards inmates in closed regime departments, whether living in a special department or in closed living modules, the CPT recommends that as much as effort as possible is made to propose activities and provide support for prisoners classified as grade 1, especially those in the Brians I and La Modelo complexes. Furthermore, it recommends that steps are taken for it to be possible to do open-air exercise in the Special Departments (none of the open-air exercise yards visited had any kind of shelter to seek protection from bad weather). Measures must be taken to solve this matter.

As for rehabilitation processes and treatment of inmates, it should be generally noted that very significant work is being done through the administrations responsible (in this case, through the Directorate-General for Prison Services) to provide the inmates in all the prisons with a range of activities geared towards rehabilitating them. In this vein, the specific aims of said activities include: intervention as regards criminogenic factors that explain the delinquent activity, encouraging skills and habits for normal life, fostering social skills for future free life outside, and improvement of inmates' quality of life within the complex itself and afterwards in their reinsertion into society. This is shown by the significant number of inmates who participate in the different rehabilitation programmes through activities planned for this purpose.

In May 2011, a new **Curricular Organisation Framework Programme (PMOC in Spanish)** was dictated by the Directorate-General for Prisons Services' Rehabilitation and Health Programmes' Sub-Management in an aim to continue progressing in the field of intervention via activities geared towards rehabilitation. The main objectives of this Framework Programme are:-

- To provide the same range of activities and intervention programmes in Catalan prisons.
- To ensure the quality of the activities.
- To make the inmates' activities plan more dynamic.
- To guide the creation of Individualised Treatment Programmes.
- To boost the effect of the intervention programmes.
- To ensure and assess the level of participation in activities.
- To ensure continuity in the inmates' work plan.
- To guide the different, most appropriate kinds of risk management for each inmate.

This framework programme organizes activities in five main areas: adult training; the workplace; health and personal development; legal, social and cultural context; and specialised assistance. These five areas allow the activities to be divided into eighteen areas for intervention, fifty-nine programmes, and two hundred and sixty-eight sub-programmes that give meaning to the overall set of activities provided by Catalan Prisons. In addition to this wide range of activities geared towards guiding the work programmes to specific, organised purposes, a series of rehabilitation itineraries have been designed that justify this means of rehabilitation. The rehabilitation curricula planned are the standard study plan and schedules associated with the following circumstances: addiction, violent behaviour, socio-cultural background, the parole and provisional release process, moving to an open environment, mental health, intellectual disability and long sentences.

To provide an overview of the size of the group intervention in these rehabilitation activities, out of an average population of ten thousand inmates in Catalan prisons during January 2012 the following inmates were assisted in each of the programmes listed below:

PROGRAMMES	No. IMATES
Specialised assistance group programmes	2,501
Health and personal development group programmes	7,164
Group programmes related to the legal, social and cultural context	3,114
Training programmes for adults	5,428
Programmes about the workplace	5,298

This Framework Programme is also running in the Barcelona Men's Prison (La Modelo). As the La Modelo prison was designed to house a population as a preventive measure, the largest concentration of group activities carried out in this complex is related to the field of training adults and the area of working life, together with activities in the field of health and personal development. The basic foundation that justifies arranging these groups into the areas described is to keep up training and/or occupational habits for the incarcerated population at the same time as improving the health and personal development of the population awaiting trial and occupying their free time in order to prevent them from becoming institutionalised in the prison environment (they are guided towards social normalisation). In prisons that house inmates already sentenced to imprisonment, more emphasis is placed on programmes for intervention in criminogenic factors that lead to criminal activity.

In keeping with the above, and considering that the average population in the La Modelo complex is one thousand eight hundred inmates, throughout January 2012 there were four hundred and thirty inmates in training, eight hundred and forty-six inmates in occupational activities, and seven hundred and ninety-nine inmates in health and personal development activities.

The above refers to general treatment programmes. As for the so-called **Special Departments in the Prisons managed by the Catalan government**, special attention has been paid to the rehabilitation policies carried out by this government. This special attention is in response to the significant role that the Special Departments play in Prisons' intervention as regards guaranteeing security and the orderly coexistence they provide, together with the need to boost education in social behaviour among inmates residing in these Departments in order for them to adapt to ordinary life.

In this vein, in order to adapt as much as possible to the legal and regulatory principles so as to achieve the goals of such special departments, Circular 5/2001 of 7 December was issued in 2001. This approves the intervention programme in closed regimes in Catalan prisons, with the aim of introducing a new model of work and intervention geared towards the following objectives:

- To prevent the closed regime from being applied.
- To use the principle of flexibility in classifying prisoners, in accordance with Article 100.2 of the Prison Regulation.
- Specialized intervention in the closed regime.
- To tailor curricula and ways of life to the different dangerous profiles of the inmates in closed regimes.
- To improve the inmates' process of reintegration into the ordinary regime.

Thus, in the Brians 1 Prison and the Barcelona Men's Prison (La Modelo), as in the other complexes, said circular is in force. Specifically, in relation to the activities and support provided in the complexes that have brought about this response, in both special departments there is a multidisciplinary team that manages the treatment applied. This multidisciplinary team consists of educators (two), one psychologist, one criminologist and an assistant teacher for the educational intervention. It is responsible for the intervention planned in Circular 5/2001, of 7 December, regarding individualised assistance and group assistance. The inmate's social worker meets the demands made by the inmate according to the needs arising during the intervention stage in the closed regime.

As for individual assistance, given the architectural features of the special departments (and specifically in the Barcelona Men's Prison) and the specific nature of the demands created by the inmates in these departments, this is the most widespread type of intervention. Inmates living in these units are fully aware of the contact hours of the professionals assigned to the special departments, who are assisted at the request of the inmates themselves, at the request of other professionals (security personnel, educational team, teacher, doctor etc.) or due to the unique nature or the inherent need for intervention due to the users' deficiencies. All of the professionals assigned to the special department's multidisciplinary team assist all the newly admitted inmates. This first assistance enables the intervention strategy to be planned within the scheduled period for the closed regime, while at the same time making a functional analysis of their behaviour to assess the problem that has led the inmate to the special department, as well as the interventions necessary that affect their cognitive/behavioural development. Also, this first contact with the inmate can help guide them as regards the characteristics of the kind of life in the department, the rules, living conditions, contingencies and expectations, etc. Other individualized interventions after entrance help make sense of their compliance with the regime inside, dealing with issues that arise during the time of incarceration in this unit.

Apart from individual intervention accounted for in the special departments at the Brians 1 and La Modelo Prison, the rehabilitation professionals have a set of group activities aimed at regulated education and non-formal (socio-cultural) education. These activities are provided in both special departments (school, press workshop, recreational games, video forum etc.) and provide optimal learning for the return to ordinary life whilst in turn enabling observation of the inmates' interactions with the others present (professionals and inmates).

Also, and in general, taking into account the patterns of life in the closed regime (Articles 93—Special Departments that hold inmates classified as grade 1 who have taken part or induced very serious disturbances in the regime or have shown extreme danger - and Article 94 - closed modules that house inmates clearly unsuited to communal regimes - of the Prison Regulation), and the inmate's current phase of progress assigned or being reviewed (phase 1 or 2), there are group interaction spaces available where inmates can interact in groups without the direct presence of a professional from the rehabilitation field. Such activities (yard, television, games, etc.) provide the inmates with a space for group socialization that helps them progress towards integration in a pattern of ordinary life.

Thus, provided that the inmate's personal circumstances and those of the regime so permit, the type of life in Article 93 provides two weekly one-hour technical interventions (psychological and/or criminologist lawyer), two weekly one-hour educational interventions, and one one-hour teaching intervention a week.

In the living arrangements of Article 94 (long and short programme), the intervention will depend on the stage that the inmate has reached. For Phase 1, four hours of communal life a day are established, distributed between the yard and the day-room. There is also one hour of group activity a day. For Phase 2, four hours a day of communal life are established, distributed between the yard and the day-room. There are also three hours of group activity supervised by the rehabilitation professionals.

Paragraph 136 (Conditions of incarceration)

The CPT asks the Catalan authorities to take immediate steps to completely improve the conditions of incarceration in the La Modelo prison. The first step should be to reduce the existing level of overcrowding.

Please see the reply to paragraph 117.

Paragraph 137 (Constructive activities)

The CPT recommends that the Catalan authorities continue their efforts to provide all the inmates with activities for specific purposes. More effort should be made, especially in the La Modelo prison, to provide prisoners with a regime that is beneficial and positive.

Please see the general statements as regards activities and treatment programmes in answer to paragraph 134.

Paragraph 138 (Personnel)

The CPT recommends that the authorities pay more attention to improving interpersonal communication between prison officials.

In regard to training, there has been dynamic management of human resources by defining basic skills in order to ensure organizational flexibility, i.e. redefining procedures and redistributing activities according to the needs of the organization, ensuring that the workers' mobility does not pose any obstacle to meeting the objectives, attempting to motivate, and improving attitudes and aptitudes.

Broadly speaking, the skills required can be defined as the body of knowledge and professional qualities necessary for a worker to optimally carry out their roles and tasks and, by extension, the set of knowledge and skills necessary to achieve the organisation's objectives. Based on this definition, **curricula have been established for professional development and further training, combining the interests of the workers with those of the organization.** The curriculum provides basic training, which is divided into a **theoretical and practical block, a block of work procedures** and specialized ongoing training, based on 8 skills:

- Institutional
- Control for security
- Prevention of incidents
- Conflict Management and Resolution
- Communication with inmates
- Cooperation and teamwork
- Tolerance under pressure
- Information management

In addition, **some skills associated with specific job posts are required** due to their unique characteristics; for example, jobs outside, in psychiatric units, in closed regimes etc.

Thus, in response to the CPT's observation, **the abilities associated with improving the prison officers' interpersonal communication skills are indeed defined and form an essential training block for training professionals in this field. This has been especially taken into account in defining the training plan for 2012 aimed at professionals in the prison services' staff of specialized officers.**

Paragraph 139-141 (Medical examination)

The CPT reiterates its recommendation for ensuring that any signs of violence observed when an inmate is examined on entering the complex should be perfectly noted together with any relevant statements made by the inmate and with the doctor's assessment (i.e. the degree of coherence between the statements made and the injuries observed). All of this information must be given to the inmate and their his/her lawyer. This same procedure for action should be followed whenever an inmate is examined following a violent episode happening in the prison. Furthermore, whenever injuries are recorded that match statements made about abuse by the inmate in question (or, in the absence of a statement, the injuries clearly indicate that there has been abuse), the relevant form should be systematically filled in and sent to the Sentence Enforcement Judge.

As already noted throughout this report, upon entering the prison, in keeping with Article 18 et seq of the Prison Regulations and Article 84 of the Regulation on Organization and Operation of criminal sentence enforcement services for Catalonia, each inmate is to be identified, registered (and their belongings also registered and stored), visited and interviewed by an educator, a social worker, a psychologist, a lawyer, a teacher and a prison doctor. When the inmate is admitted, his/her medical history is begun. This will accompany them during their incarceration in this or other penal complexes or prisons. Obviously, this procedure is to be carried out paying particular attention to the inmate's physical and psychological condition and in order to learn the circumstances as regards their income and their personal and family situation.

Clearly, **any sign of violence observed is reported immediately to the prison management.** These reports are sent to the judicial authorities together with the statements made by the inmate, incorporating the statements made into the documentation of their personal file, to which they may also have access.

Paragraph 142 (Recording medical prescriptions)

The CPT recommends that the reasons for which psychotropic medication is prescribed in the Brians 1, Lledoners and La Modelo complexes should be clearly recorded in the inmates' medical records.

As already noted above, a medical record is begun for each inmate when they first enter the prison. This record is individual and is to accompany them during their time in the prison, and if they are transferred to other complexes or prisons. The medical record is the basic instrument that holds data on the health care process for each inmate.

The medical prescription is part of the health care procedure and must be recorded in the medical record. The Catalan Prison Administration notes that health care professionals at the prisons dependent on said administration are aware of this and act accordingly. However, following the recommendation made by the CPT, it will be checked that clinical records are being properly maintained in the prisons indicated by the CPT, and in particular that the psychoactive drug prescriptions are recorded.

Paragraphs 144-147 (Disciplinary regime)

The CPT analyzes the disciplinary system, accounts for an incident within this context (paragraph 144), and recommends that the disciplinary system be reviewed to ensure that, in practice, inmates have the following rights inter alia: a) have enough time and information to prepare their defence; b) be heard in person by the authority in charge of decision-making (i.e. the Disciplinary Commission), c) summon witnesses from among the inmates and contrast the evidence provided against them, d) make allegations to reduce the penalty in cases where the Disciplinary Commission finds them guilty. In addition, the CPT indicates that inmates who file an appeal against a sanction should not be subject to retaliation.

At this point it is necessary to reiterate what has already been stated in response to other comments made by the CPT in the same vein throughout its report. In order to facilitate understanding of the response, some of the comments already made are reiterated.

The disciplinary regime of the prison population is based on and regulated by Articles 41 to 44 of *Ley Orgánica 1/1979* of 26 September. The regime is also bound by Articles 231 to 262 of the Prison Regulation, which constitute Title X of this body of law, and Articles 108, 109, 110 and 111 and the first paragraph of Article 124 of the General Prison Regulation approved by Royal Decree 1201/1981 of 8 May, regarding misdemeanours or infringements by inmates, disciplinary measures and acts of serious indiscipline.

As stated in Article 232 of the Prison Regulation (and 35 of the Regulation for Organization and Operation of criminal sentence enforcement services for Catalonia), **the disciplinary authority rests with the Disciplinary Commission**, which is the professional body for the prison, with no detriment to the authority of the governor for imposing sanctions for committing minor offences and the powers of jurisdiction over prison supervision, and in accordance with the principles established in the Constitution, *Ley Orgánica 1/1979* of 26 September for Prison Regulation.

The disciplinary regime is governed by the **principles of legality and non-retroactivity, speed, culpability and proportionality** in accordance with Article 234 of the Prison Regulation, judicial control by the **Sentence Enforcement Judge** in accordance with Article 76 of *Ley Orgánica 1/179* of 26 September: **opportunity and ultima ratio, the right to regulated procedure, information, defence and the presumption of innocence.**

As stated in Article 231 of the Prison Regulation, the prisoners' disciplinary regime is intended to ensure security, good order in the regime and to achieve an orderly coexistence so as to encourage a sense of responsibility and self-control, as presuppositions necessary for carrying out the purposes of prison activity, adding that the disciplinary regime applies to all inmates, with the exception stipulated in Article 188.4 of the Prison Regulation, i.e. patients admitted to psychiatric facilities or units, irrespective of their legal and penitentiary situation. This applies within prisons, during transfers, parole and authorised leave.

Furthermore, it should be noted that agreements as regards sanctions are not to be carried out until the inmate's appeal has been resolved before the Sentence Enforcement Judge or, if an appeal has not been filed, until the deadline has passed for an appeal. However, according to Article 252 of the Prison Regulation, in the event of serious breaches of discipline and if the Disciplinary Commission considers that compliance with the sanctions cannot be delayed, the sanctions imposed shall be carried out immediately, provided they correspond to acts of serious indiscipline as described in letters a), b), c), d), e) and f) of article 108 of the General Prison Regulation, approved by Royal Decree 1201/1981 of 8 May (that is, in short, very serious offences such as participating in group riots, disobedience or disorders; assaulting, threatening or restraining people inside or outside the complex, assaulting or restraining other inmates; severe active resistance to obeying orders received from the official or authority legitimately exercising their functions; attempting, aiding or committing an escape; and deliberately sabotaging the areas, materials or material property of the establishment or the belongings of other people, causing costly damage).

It is therefore clear that the disciplinary procedure is regulated as an administrative procedure subject to mandatory deadlines in carrying out its formalities, securing the rights of inmates who must be able to exercise their right to defence at all times.

Disciplinary offences are subject, in accordance with Article 258 of the Prison Regulation, to the following limitation periods: very serious: three years; serious: two years; and minor: six months. All of these start from the date on which the offence was committed. The third section of the same article states that the sanctions imposed for very serious and serious offences will be limited by the same periods indicated and that those imposed for minor offences will be limited to one year, counting:

- As of the day following that on which the punitive agreement becomes administratively valid, or where applicable,
- As of the lifting of the stay of carrying out the sanctions or suspension of it coming into effect.
- As of the interruption in compliance with the sanction, if this has already begun.

The sanctions may be automatically terminated in accordance with Article 259 of the Prison Regulations, in the event that an inmate is admitted again into a prison, with automatic termination being declared for the sanction that had been imposed during the last entry into the prison and which had still not been fully or partially complied with through parole or definitive release of the inmate, even if the deadlines established for the limitations have not elapsed.

Moreover, there are measures designed for suspending, reducing, replacing or withdrawing the sanctions, depending on the circumstances of the specific case, also taking into account cancellation of annotations made about the disciplinary sanctions, ex officio or upon request, once the ordinary deadlines of six months have elapsed for very serious offences, three months for serious offences and one month for minor offences.

These deadlines are counted as of fulfilment of the sanction, provided the inmate has not committed a new very serious or serious disciplinary offence. This cancellation of sanctions includes those for the offences for which they were imposed and places the inmate in the same situation as if (s)he had not committed any disciplinary incident.

In summary, the prisons and the Prison Administration ensure the correctness of the disciplinary procedure, respecting all the inmates' rights and the speed of procedures, always and in all cases paying attention to the legally established deadlines.

More generally, the CPT wishes to recall that it is the duty of the Prison Administration to conduct a thorough investigation into all incidents that may result in disciplinary sanctions. Finally, the Catalan authorities are requested to take the necessary steps so that the disciplinary measure of solitary confinement is carried out with the guarantees mentioned above.

Article 72 of the Prison Regulations stipulates that “[...] the following are restrictive means, according to Articles 45.1 of Ley Orgánica 1/1979 of 26 December: provisional solitary confinement, personal physical force, rubber truncheons, appropriate action sprays and handcuffs [...].”

Therefore, **provisional solitary confinement is of the same nature and involves the same considerations as above regarding restrictive means** and therefore it is applied for as long as is strictly necessary, while the exceptional circumstances that justified it last, in order to restore normal cohabitation.

Restrictive means are always to be applied under supervision from a Head of Services from middle management for the internal regime. As mentioned above, such means are subject to a series of controls and supervision of the inmate.

Paragraph 149 (Provisional solitary confinement sanction)

The CPT recommends that immediate steps be taken to ensure that no inmate is subjected to continuous solitary confinement for more than fourteen days as punishment. If the inmate has been sanctioned to remain in solitary confinement for more than fourteen days due to committing two or more offences, there should be a break of several days after fourteen days as of when it began. The CPT also believes it would be preferable to reduce as much as possible the period of solitary confinement as punishment for specific disciplinary offences.

As indicated above, in particular in the answer to paragraphs 73-75, both Article 41 of *Ley Orgánica 1/1979* of 26 September and Article 231 of the Prison Regulation **stipulate that the disciplinary regime for the incarcerated population aims to ensure security, good order in the regime and to achieve suitable co-existence**. All of this is done so as to encourage a sense of responsibility and capacity for self-control, as presuppositions necessary for carrying out the purposes of prison activity, meaning re-education and re-insertion into society.

Under no circumstances is the disciplinary sanction meant to be a punishment, but to be therapeutic. **Temporary solitary confinement in a cell is the most serious sanction** that can be imposed, and it is stipulated that this may be imposed continuously for **six to fourteen days only for very serious offences as in Article 108 of the Prison Regulation**, and provided that the events lead to the conclusion that the inmate is clearly aggressive or violent, or when (s)he repeatedly and seriously disturbs normal coexistence in the complex.

To specifically define the sanction, a principle of proportionality is applied as well as the following considerations, in accordance with Article 234 of the Prison Regulation:

- The nature of the offence;
- The severity of damage caused;
- The extent to which the acts have been carried out;
- The guilt of those responsible;
- The extent to which they have participated in them;
- As in other concurrent circumstances.

Indeed, Article 42.2 of *Ley Orgánica 1/1979* of 26 September stipulates that **solitary confinement may not exceed fourteen days**. That said, according to the provision of Article 42.3 of the law ("in the event of repeated offence, the sanctions may be increased by half to up their maximum"), Article 235 of the Prison Regulation provides for a **truly exceptional supposition when it states that "in the event of a repeated offence, the sanctions may be increased by half to up their maximum"**. Immediately afterwards it explains that "a repeated offence means when the inmate responsible for the disciplinary offence has previously received another final sanction for serious or very serious offences and the corresponding entries in his/her file have not been cancelled."

Also, as regards fulfilment of this, **Article 236 stipulates** that "appropriate sanctions shall be imposed on him/her [...] to be **carried out simultaneously** if possible and, if not, they shall be carried out in order of their respective severity or duration." The second section regulates the supposition and notes that "**the maximum compliance may not exceed three times the amount of time corresponding to the most severe sanction, or forty-two consecutive days for solitary confinement in a cell**".

It must be kept in mind that a delay in implementing the sanctions may have an effect on the cancellation period for the disciplinary entries, which may in turn affect eventual proposals to grant prison benefits.

We can see, then, that **the maximum compliance may not exceed three times the amount of time corresponding to the most severe sanction, or forty-two consecutive days for solitary confinement in a cell, and that when the sanctions exceed the aforementioned fourteen days of solitary confinement, they must all be approved by the Sentence Enforcement Judge** in accordance with Article 76.2. (d) of Act 1/1979 of 26 September, and may not be implemented until this has been confirmed.

Consequently, it must be noted that the situation of solitary confinement sanctions in a cell exceeding fourteen days is exceptional, is subject to immediate jurisdictional review and has been expressly ratified by the Constitutional Court (Ruling 2/1987, of 21 January).

Paragraph 151 (Complaints system)

The CPT recommends that the Catalan authorities create a suitable internal complaints system in addition to the means that already exist.

In this regard, it should be noted that if an inmate files a complaint about or reports a fact from which one can infer potential liability in the conduct of an official, the Inspectorate shall immediately activate its intervention mechanisms to investigate the facts (informative reports, in the first phase) or reserved information. It must be remembered, however, that the purpose of the Inspectorate is not to investigate crimes.

Therefore, when the Inspectorate, with maximum independence and impartiality, perceives indications of crime, their praxis is to make this known to the public prosecutor's office and/or the judicial authority. This happened in the case of the complaint with file number 5,500 in 2011, in which the facts became known to the judicial authority as a result of the complaint filed with the Síndic (Catalan Ombudsman) by an inmate who reported having been abused.

Paragraphs 152 and 153 (Sentence Enforcement Courts)

The CPT reiterates its recommendation on the need for measures to improve the situation of the Sentence Enforcement Courts so that they can effectively safeguard the inmates' rights.

It also reiterates the content of the answer to paragraph 77 of the report.

The CPT welcomes the fact that the Síndic de Greuges (Catalan Ombudsman) regularly visits prisons and trusts that the Catalan authorities ensure that it is provided with the means necessary for it to perform its tasks.

○The *Defensor del Pueblo* (Spanish state ombudsman), which has universal jurisdiction for supervising Spanish public administrations, and the *Síndic de Greuges* (Catalan ombudsman) in its supervisory jurisdiction of the Administration of the *Generalitat* of Catalonia (Catalan regional government), as well as **similar bodies to the *Defensor del Pueblo* in other autonomous regions**, constantly supervise government activity in general. This leads to their annual report and recommendations and suggestions, and specifically they receive complaints from citizens. This activity is intended as an additional guarantee to the courts, provided for in the law in order to respect fundamental rights. As indicated above, the *Defensor del Pueblo* recently assumed the **role of MNPT. This has resulted in the adoption of an operational structure dedicated exclusively to visiting places where there is imprisonment** and, in the case of Catalonia, the assumption by the *Síndic de Greuges* of the functions of the **Catalan torture prevention authority** in collaboration with the *Defensor del Pueblo*.

In 2011, the Directorate-General for Prisons of the *Generalitat* (Government) of Catalonia's Department of Justice processed and responded to a total of **three hundred and eighty-nine cases issued by the *Síndic*, including complaints, inquiries (via telephone or e-mail), etc.** Of these three hundred and eighty-nine records, one hundred and nine had been opened in 2010, and two hundred and eighty in 2011.

On 31 January, 2012, only six cases (1.5% of the total) remained unanswered by the Prison Administration of the Government of Catalonia's Department of Justice. These are records whose answer requires more time and dedication since they require information to be gathered and studied, and the corresponding report drawn up, as they relate to ex officio actions or complaints involving more than one person and matter.

Another fact to consider according to a study by the Prison Administration of the Government of Catalonia's Department of Justice on a sample of complaints processed in the last quarter of 2011, is that the average response time by the Prison Administration of the Government of Catalonia's Department of Justice to complaints from the *Síndic* was 6.8 days, with the longest time being 27 days. In 3 cases, the *Síndic* was informed on the same day and in another 10 cases, the next day.

It should also be noted that in the past year there were nineteen cases with suggestions from the *Síndic*, corresponding to complaints from 2011 and others outstanding from 2010, and in seven cases these suggestions were partially or fully accepted.

It is also noted that there were fifteen visits by the *Síndic* and/or its advisers to prisons in 2011 and six visits from the Catalan Authority for the Prevention of Torture. According to the management of the prisons visited, in no case were any incidents registered and the collaboration between the two institutions was deemed to be positive.

The Directorate-General for Prisons has attended to every one of the complaints and requests submitted, even when they have not complied with the provisions of Article 38 of the Law on the *Síndic de Greuges* (Catalan Ombudsman) itself, concerning situations of inadmissibility of complaints, taking into account the inmates' greater difficulties and limitations in getting access to institutions such as the *Síndic*.

In summary, the above highlights the prison services' unmistakable will for collaboration and transparency towards institutions such as the *Síndic de Greuges* (Catalan Ombudsman) and other bodies and groups that watch over people's rights, and for the professional civil service to work properly in the complex and heterogeneous area of the prison system, whose purpose should not be limited to enforcing sentences and the custody of persons deprived of liberty, but should include a constitutional, humanist motivation for the rehabilitation and reinsertion of the incarcerated population into society and the workplace under optimum conditions of normality and with minimum guarantees that they will not relapse, since this task implies a significant benefit for society in terms of security, well-being, cohesion and justice.

Paragraph 154 (Foreign inmates)

The CPT recommends that the Catalan authorities increase their support for foreigners who enter the Catalan prison system.

The prison authorities carry out a set of activities to support foreign inmates, in accordance with the law.

Article 4 paragraph (a) of the Prison Regulation provides a **basic principle by stipulating that prison activity is exercised with no possibility for discrimination to prevail**, among other matters, on grounds of nationality. Along the same lines, there are several precepts in the same regulatory rules:

- Article 41.7 of the Prison Regulation, which stipulates that **communications and visits shall be organized so as to meet foreign inmates' special needs**, to whom the general rules in this matter shall be applied in the same conditions as with nationals;

- Article 5 of Royal Decree 782/2001 of 6 July, which regulates the special work relationships of inmates carrying out work activities in prison workshops and protection of the Social Security of those subject to sentences involving work for the benefit of the community, recognises their **right not to be discriminated against in the work, or once they are employed, because of their nationality**;

- Article 118.2 of the Prison Regulation stipulates that foreigners shall have the **same access to training and education as nationals**. To this end, the Administration shall seek suitable means for them to learn the Spanish language and the official language of the Autonomous Region where the prison is located.

- Article 15.5 of the Prison Regulations stipulates that foreigners have the **right, if they so request, for their incarceration to be brought to the attention of the corresponding diplomatic or consular authorities**. When this procedure is carried out, it is always documented in all cases.

- Article 49.3 of the Prison Regulations recognizes their **right to communicate with said authorities when they so request**;

- Article 52.2 of the Prison Regulations recognizes the **right for the Prison Administration to provide them with the address and phone number of their country's diplomatic representatives in Spain**;

- Finally, as a general rule, Article 62.4 of the Prison Regulations stipulates that **the Administration should especially foster the collaboration of institutions and associations dedicated to re-socialising and aiding foreigners**, facilitating cooperation from social organizations from the inmate's country of origin through the corresponding consular authorities.

Due to their importance, it is worth noting activities related to informing foreign inmates about their rights and duties, and especially about the treaties and agreements signed by Spain for moving convicts, as well as the legal possibilities for substituting sentences and applying the measure of expulsion from the national territory in keeping with Article 52 of the Prison Regulations. These supportive activities are a priority and are necessary when one considers **the high number of foreign prisoners** in the prisons – currently around **45% of the incarcerated population** – and the specific nature of intervention involving these people, aimed at their social integration and reinsertion.

To this end, various **specific programmes** have been drawn up, such as: the education framework programme for co-existence amid diversity, the programme for intercultural mediation, education for religious assistance, legal advisory services for foreign inmates, the pilot programme for creating micro-companies, the programme for accompanying young immigrants, the CIRSA Subcommittee on Immigration, communities of practicing lawyers and social workers, inter-complex working group aid programmes for inmates and families, and resources subsidized by the managerial complex to provide accommodation during temporary leave, parole or final release if they do not have a network of family and friends.

The **Directorate-General for Prisons' recent Circular 1/2011 of 11 July on Foreigners in Catalan Prisons** is noteworthy for its importance. Its stated aims are as follows:

- ❖ To improve collection and digitally store data relevant to foreign inmates;
- ❖ To define the specific work objectives for foreign inmates geared towards reintegration: dealing with documentation, expulsion, consular contacts, etc.;
- ❖ To improve the information given to foreign inmates and specify individual treatment programmes with future goals tailored to their actual situation regarding insertion, enabling them to build a realistic perspective regarding their future;
- ❖ To foster a positive climate of cooperation and prevent conflict by promoting intercultural relations, so as to avoid areas that may lead to violent, hierarchical or undesirable subcultures;
- ❖ To avoid social isolation of foreigners, especially in cases where it is not feasible to approve temporary release, via volunteer networks and the use of information and communication technology (Internet, video conferences, etc.);
- ❖ To improve coordination with the judicial, police and government authorities;
- ❖ To facilitate training and specialisation for prison staff;

In all cases, **specific measures have been promoted to comply with the law and avoid situations of discrimination or violation of fundamental rights**.

“L’ALZINA” JUVENILE EDUCATION CENTRE (Catalonia)

Preliminary considerations

In accordance with the existing Criminal Code (approved by *Ley Orgánica* 1/1995 of 23 November), the minimum age of criminal responsibility is eighteen, such that the rules for criminal responsibility under eighteen years of age arise from another law, specifically *Ley Orgánica* 5/2000 of 12 January, which regulates the Criminal Responsibility of Minors. This law distinguishes between acts committed by persons of fourteen years of age and over but under eighteen, and those committed by children under fourteen. For the former supposition, the so-called "young offenders' centres" have been set up to implement "incarceration and other measures" whose main purpose is to ensure respect for the "best interests of the minor". The more detailed aspects of this regime are given by Royal Decree 1774/2004, of 30 July, approving the Regulation implementing the *Ley Orgánica* 5/2000 of 12 January, which regulates the criminal responsibility of minors.

The **measures in question may include** internment in a closed, semi-open or therapeutic regime, treatment via compulsory visits, attendance at a day centre, weekend stays, probation, restraining orders, living with others, community sentences and social/educational tasks. These measures are dictated by Juvenile Courts (Article 38 of *Ley Orgánica* 5/2000, of 12 January), but their implementation is the responsibility of the Autonomous Regions (Article 45 of *Ley Orgánica* 5/2000, of 12 January), whose legislation in these matters is therefore applicable within the context established by the *Ley Orgánica* itself and its rules for implementation. In the context of the Autonomous Region of Catalonia, the following are currently in force: Act 27/2001 of 31 December on Juvenile Justice, and its rules for implementation, Decree 46/2006, of 28 March, which defines the single-person superior bodies for the juvenile justice centres.

According to Article 54 of the *Ley Orgánica* 5/2000 of 12 January, **custodial measures shall be implemented in specific centres for young offenders**.

The *l’Alzina* Juvenile Education Centre was visited by the CPT's delegation during its last visit. The members of the delegation had access to all the educational units and talked to almost all of the sixty-five young people at the day centre when they visited. These conversations were held in privacy and without the presence of any professionals, focusing attention primarily on the Anoia Coexistence Unit and the Specific Intervention Zone (ZIP in Spanish).

The *l’Alzina* Education Centre is a juvenile justice complex located in Barcelona (Catalonia). It is responsible for enforcing **incarceration measures in a closed regime imposed on over sixteen-year-olds as a result of any of the following circumstances** (section two of Article 9 of *Ley Orgánica* 5/2000 of 12 January):

- Having committed one of **the most serious crimes under section two of Article 10 of *Ley Orgánica* 5/2000 of 12 January** (homicide; murder in the first-degree, for a price, reward or promise, or with cruelty; crimes against sexual freedom and acts of terrorism).
- Having committed a **serious crime under the Criminal Code or special criminal laws, or repeat offenders**. These circumstances may justify imposing a custodial sentence for longer than one year on over-sixteen-year-olds.
- Having committed **misdemeanours in which violence or intimidation against persons has been used or which has caused serious risk to their life or physical safety**.

- Being over sixteen years old but the incarceration measures imposed are in a semi-open regime due to the need for stricter confinement because of their maladjustment to other juvenile justice centres (assaults on professionals or inmates, very negative progress in terms of education and behaviour etc.).

The **Anoia Coexistence Unit** is in the *l'Alzina* Education Centre. This unit has a maximum capacity for ten young people and is designed to cope with those who are the most conflictive and disobedient to educational activity, those who do not meet the objectives of their Individualised Education Project's work plan or they do so very poorly, and those who commit numerous serious or very serious disciplinary violations and who do not adapt to the coexistence in the centre's other units.

This unit's mission is to deal with young people through an intensive intervention programme. It therefore has a higher ratio of educators per minor. The time spent in this unit is limited (one month at most), in order that they can again be admitted to the unit from which they came.

Finally, the Specific Intervention Zone (ZIP) is a module designed to implement disciplinary sanctions involving separation from the group (cautionary and final), and for minors who are in provisional solitary confinement as a means of restraint.

Paragraphs 156 and 157 (Abuse)

The CPT recommends that the Catalan authorities ensure that investigations into allegations of abuse meet the criteria of an effective investigation. Moreover, the CPT recommends that a clear message be conveyed to the security guards at the l'Alzina Education Centre that any form of abuse, including verbal abuse, is unacceptable and will be met with severe disciplinary measures.

As regards the first recommendation, an explanation is now given about the **procedure to follow when an inmate complains, whether verbally or in writing, claiming to be the victim of any kind of abuse (physical or verbal)**, allegedly committed by a member of staff or of the Centre's security team:

1 If the alleged abuse occurred during an intervention that has led to written communication, the centre's management shall review all such communication made by members of the security staff, coordinator or educator who has witnessed the intervention. This will provide a preliminary version of the events.

2 If the complaint is about physical abuse, the centre's medical service shall be requested to carry out a medical examination on the inmate and to draft the corresponding report with the findings observed.

3 A member of the management team shall take a formal statement from the allegedly abused youth.

4 A member of the management team shall meet the professionals who are connected in some way or know something about the allegations.

5 A member of the management team shall take a formal statement from the other young peers who may have witnessed or heard the alleged abuse.

6 Surveillance video recordings are to be re-reviewed for more information if the alleged events have occurred in an area of the Centre with video surveillance.

7 If the complaint refers to a member of the security staff from the security company working in the centre, instructions shall be given as a precautionary measure so that the members reported in the complaint do not have any relationship with the inmate that has accused them whilst the internal investigation lasts. To do so, said member(s) of the security staff is to be placed in security services with no direct contact with the youths of the centre. The security company's coordinator shall also be informed of the allegations and the precautionary measures taken.

8 If after the Centre has gathered information there is any indication of any security staff member being responsible, the centre's management shall apply a clause in the current contract that requires the security company to take the member away from the service in the Centre. Also, the director of the Centre shall prepare a report with the alleged events, the steps taken and the existing evidence, sent to the Directorate-General for Prisons. If there is evidence in this report of events that may constitute a criminal offence or misdemeanour, the Directorate-General shall inform the relevant Examining Magistrate's Court.

9 If the complaint is made against public employees of the Centre (civil servants or hired staff), as soon as evidence of alleged abuse is found, the Centre's management shall submit a report to the Directorate-General with the existing evidence and suspects.

In addition, the Directorate-General sends the report to the Inspectorate of the Directorate-General for the Prisons of the Department of Justice. This Inspectorate assumes duties that include inspecting prisons, Education Centres or juvenile justice centres. The service is responsible for conducting a reserved investigation into the allegations, including an interview with the inmate and the alleged perpetrators in order to check if there is evidence of inconsistencies and suggesting to the Directorate-General the most suitable action to take depending on the result of the investigation. The proposal may have two possible outcomes: a) closure and filing away of the proceedings for cases where there is no evidence of irregularities, or b) initiation of disciplinary proceedings in the event that there is evidence of lack of discipline in the public employee's actions. Finally, if the events may constitute a criminal offence, they shall also be brought to the attention of the relevant Examining Magistrate's Court.

It should also be noted that the inmate may lodge a complaint of alleged abuse directly, in an open or closed envelope, to the Inspectorate, the *Síndic de Greuges* (Catalan Ombudsman), to the Juvenile Court, to the Public Prosecutor or to the Examining Magistrate's Court. These may initiate the appropriate administrative or judicial investigation into the events, in accordance with the provisions of the legislation in force. The right to file a complaint or report an incident directly is accounted for in the Spanish juvenile justice legislation (paragraph k of the second paragraph of Article 56 of *Ley Orgánica 5/2000*, of 12 January) and in the corresponding Catalan legislation.

Thus, today, **if there is a complaint of abuse made by an inmate of an educational or juvenile justice centre, different investigation mechanisms are activated**, namely: the **internal mechanisms of the centre itself**, the **internal mechanisms of the Directorate-General itself via the Inspectorate**, and the **external mechanisms of other institutions**, whether **judicial** (Examining Magistrates' Courts and the Juvenile Court itself) or other institutions whose duty is ensure legal safeguards (**Public Prosecutor's Office**) and the inmates' rights (***Síndic de Greuges***). All of these mechanisms are effective in investigating allegations of abuse and are independent of each other.

As regards the second recommendation, i.e. *that a clear message be conveyed to the security guards at the l'Alzina Education Centre that any form of abuse, including verbal abuse, is unacceptable and will be met with severe disciplinary measures*, it must be remembered that current juvenile justice legislation authorizes the administration responsible to acquire staff specialising in security and surveillance tasks, when circumstances call for this. Private security staff carry out functions of "support" for the functions of surveillance and internal security that are the responsibility of all the staff at the Centre within the scope of their duties.

The *l'Alzina Juvenile Education Centre* has support staff who are experts in support for security and surveillance, in dealing with the types of measures that are carried out there and with the inmates' characteristics.

The security firms involved in these Centres are required to strictly comply with the technical specifications drawn up by the Administration, which regulates the way, the requirements and the conditions in which the service must be provided. The clauses contained in the Specifications include **the basic principles for security guards to act upon, which notably include the following:**

- ✓ Security staff, regardless of their employment relationship, carry out their functions under the functional dependence of the director of the Centre and shall act at all times in accordance with the Centre's written safety protocols and the orders received by the staff from the Centre's management. Security guards cannot take any security measures independently and without a formal request from the Centre's management, except in emergencies, which must be subsequently justified and reported to the management.
- ✓ The functions of surveillance and internal security that are carried out by said staff in the Centres are to support the functions of surveillance and security legally applicable to all employees at the Centre.
- ✓ In their activity inside the Centre, the security staff must observe the principles of legality, necessity and proportionality, as well as full respect for the dignity and fundamental rights of individuals.
- ✓ In their activities, they must also observe the principle of minimum intervention. Their interventions must be authorized in advance by the Centre's director or the CENTRE's head on duty, especially those involving taking measures of restraint accounted for under current law, unless, for reasons of urgency, it is not possible to communicate this beforehand. In this case, in keeping with current regulations, action must be taken and the Centre's director or head on duty must be informed of the action taken and the reasons for it.
- ✓ If the means of restraint are required, the security staff must apply these means in accordance with the procedure established by law and observing the dignity and physical integrity of the minors.
- ✓ The security guards should treat the minors and youths with discretion and in a dignified and proper manner at all times. Contact with inmates should be the minimum necessary to carry out their functions, avoiding familiarisation at all times. They should not respond to verbal provocation from the minors or act against them, and they must notify the Centre's professionals of these cases, who will be responsible for taking the appropriate measures. They may not take punitive measures (sanctions) as regards the minors or intervene in disciplinary proceedings.
- ✓ The security staff must only intervene with the Centre's professionals present.

✓ The Centre's management may at any time request that the security personnel report, verbally or in writing, on the interventions they have carried out. After the security team have acted, two separate reports are drafted - one by the security members who have acted and another by the coordinator or member of the educational team that was present during the event.

All security guards are required to comply strictly with the aforementioned obligations and they are informed of this when they start to work at any Centre. In addition, the current Technical Specifications Document also includes a clause stating that "the company must replace workers at the request of the Department heads when, according to the latter, they do not meet the minimum requirements to provide the service for which they were hired, they are not suited to its characteristics, or their attitude or aptitude is not appropriate. The change is to be requested in writing by the General-Directorate's Human and Economic Resources Service with justifications, upon request from the Centre's management."

The company's guards and heads shall be informed that any form of physical or verbal abuse towards an inmate or any improper attitude (although not constituting physical or verbal abuse) shall entail immediate consequences. Firstly, it may lead to removal of the guard who has acted improperly. Simultaneously, the facts shall be reported to the relevant Examining Magistrate's Court if there are signs that they may constitute a criminal offence.

As an example, there was the case **in April 2010 of a member of the l'Alzina Education Centre who behaved inappropriately in carrying out his functions.** Specifically, the security guard handcuffed a youth without permission for a few minutes during transfer from the "Besós" Coexistence Unit to the "Anoia" Coexistence Unit. The guard used a means of containment without the necessary authorization from the Centre's management or any incident head, without being able to provide emergency reasons to justify the containment. Furthermore, he did not fill in the relevant document to notify of the use of the means of containment or to explain the emergency reasons. Therefore, once the director of the Centre was aware of these facts, he contacted the security company's coordinator to request that the security guard be immediately replaced. The next day the guard ceased to work in the *l'Alzina Juvenile Education Centre*.

Paragraph 158 (Conditions of incarceration)

The CPT points out that ventilation inside the Anoia module in the l'Alzina Education Centre was bad and there was a humid atmosphere.

The *Anoia* and *Besós* units, as a Specific Intervention Zone (ZIP), have rooms with windows to the outside, but they cannot be opened for security reasons. In these zones, ventilation and air conditioning are artificial and work through slits with air vent outlets.

The Centre's maintenance service checks and cleans the air vents regularly for the *Anoia* and *Besós* units and the ZIP rooms, so that the ducts are always in working order. The frequency of these check-ups on vents has been increased to prevent them from becoming blocked and to attempt to improve ventilation within the limitations provided by a ventilation system like the one installed.

Paragraph 160 (Health care)

The CPT recommends that the contact hours of a dentist in the Centre are increased to ensure that all inmates who need dental treatment receive the necessary aid in due course.

The *l'Alzina* Juvenile Education Centre does not have a dental service of its own but this does not mean that it cannot give a dental service to all the minors who need it. Currently, **the dental service for minors in the *l'Alzina*, *Can Llupia* and *Els Til-lers* Education Centres, all of which are in the province of Barcelona, is provided by a dentist** who works part-time at the *Els Til-lers* Education Centre, located in Mollet del Vallès, a town very near to the town of Palau Solità i Plegamans, which is where the *l'Alzina* Education Centre is located. The reason for this is to rationalise the service, considering that the number of inmates in any of the above Centres alone would not justify having its own service of this kind. Thus, a **shared service** has been decided upon.

The **dentist visits the *l'Alzina* Education Centre one day a week**, currently on Wednesdays.

When an inmate in the *l'Alzina* Centre requires dental service, (s)he is referred by the Centre's doctor to the *Els Til-lers* Education Centre's dentist. The maximum number of inmates from *l'Alzina* to be transferred upon each visit is three, for reasons of security and police custody. The number of days of visits to the minors at the *l'Alzina* Centre is a minimum of two per month. With this frequency, in 2011 there were no delays or long waits for dental care. All of the youths were aided when they so needed.

However, if at any time there is an emergency situation that cannot wait, the Centre's medical services can refer the youths to the emergency dental services of the Catalan Health Service. This circumstance has arisen in 2011 twice.

Paragraph 161 (Personnel)

The CPT recommends that steps be taken to ensure that all the security guards are carefully selected and properly trained to work with youths.

As explained in paragraph 157, **the security firms involved in these Educational or juvenile justice Centres are required by contract with the Justice Department to comply with a regime and must comply with the Technical Specifications Document drawn up by the Administration**, which regulates the way, the requirements and the conditions in which the service must be provided. The clauses in the Technical Specifications Document include the basic principles for providing the service delivery and the general and special requirements to be met by the security personnel in order to provide the service at the Centre. **The basic principles of the service have been discussed above, but it is worth emphasising the main ones:**

- The organization, management and control of the security services they provide in the Centres are the responsibility of the Department of Justice using units or individuals designated for this purpose.

- In accordance with Article 34.2 of Act 27/2001 of 31 December, on Juvenile Justice, even if the personnel specialising in security and surveillance functions within Centres is hired from an external company, when working in the Centre they do so answering in practice to the Centre's director.

- The security personnel shall at all times act in accordance with the Centre's written security protocols and the instructions and orders (verbal or written) received by the Centre's management staff, which they must comply with. Furthermore, the company hired and its workers should be aware of these security protocols and instructions through appropriate coordination and monitoring meetings held in the Centre at least once a month and attended by the Centre's director, the head of the security team and other people suggested by both parties.

- The company is obliged to appoint a security coordinator, who shall hold a senior position in the company, and who must ensure compliance with the terms of the contract, the proper functioning of the service, and should advise the management team of the Centre and the Department about drawing up security protocols, suggesting the improvements they consider necessary. They shall be physically present in the Centre for a minimum of twelve hours a week, spread over two working days. The Department of Justice reserves the right to request this coordinator be replaced by another person, for the same reasons stated in the contractual clause by which requests can be made to replace security guards.

- One of the security service workers shall be considered the head of the teams and shall be the first interlocutor from the company with the Centre's management for communicating and conveying instructions, communicating information and resolving contingencies. Furthermore, on each of the shifts, one of the company's workers shall be considered the "head of the shift" and shall be the interlocutor with the Centre's management as regards issues of the service provided during the time slot that is assigned to him/her.

As for the general and special requirements that must be met by the security personnel in order to provide the service at the centre, the following ones should be highlighted:

- ❖ All staff employed by the security company must have security guard accreditation and comply with the requirements stated by Act 23/1992 of 30 July on Private Security, and its implementation regulations.
- ❖ The security company has to ensure and demonstrate that the guards appointed to the service at the Centre have no criminal record pending annulment.
- ❖ The company must justify to the Administration with documentation that it has drawn up the training and ongoing training plan and refresher courses of twenty hours, which must be carried out under the Private Security Regulation approved by Royal Decree 2364/1994 of 9 December.
- ❖ In the juvenile justice centres where there are inmates, the company must ensure there are female staff present among the security guards twenty four hours a day.
- ❖ Security personnel cannot have any weapons with them in the Centre or bring them in, and are only allowed to have the means of restraint authorised by the regulations in force, which are subject to prior authorization and supervision by the Centre's management.
- ❖ The company and the security guards involved in the Centres are required to keep secret any information about inmates or the Centre's workers who they meet during the course of their duties, and they are subject to the responsibilities provided in the legislation on data protection in the event that they fail to comply with this duty.

As regards the **specific procedure for selecting the security personnel involved in the *l'Alzina* Centre**, the following phases should be noted:

- 1) When vacancies appear, the coordinator of the security company shall propose several candidates to Centre's director.
- 2) The Centre's director then studies the CVs and, after an initial screening, the candidates are invited for an interview with the director.
- 3) During the interview, the director assesses not only the professional skills of the candidates, but also the suitability of their profile and characteristics to the Centre's needs.
- 4) The chosen candidates receive a copy of the rules for the internal functioning of the Centre (Circular 1/2008, of 28 April), from the Juvenile Justice Directorate-General on common criteria for action and running of juvenile justice education Centres), as well as the management orders concerning the tasks to be carried out and the Centre's security protocols, which they should know.
- 5) The Centre's director informs them of certain kinds of behaviour and attitudes that are not tolerated or permitted in the Centre and which would lead to automatic withdrawal from the service and, if necessary, a report to the Directorate General and the Inspectorate if responsibilities of any kind arise from them.

Furthermore, in addition to the obligations arising from the instructions, orders and protocols established by the Centre's management and the technical specifications document, **in the *l'Alzina* Education Centre the security team members have two hours of training every Wednesday. This mainly focuses on the proper use of the means of restraint, effective intervention in crisis situations, and learning and improving technique in using the minimum force necessary.** Along with the Centre's rules of operation (Circular 1/2008 of 28 April, from the Directorate General of Juvenile Justice on common criteria for action and operating in juvenile justice education Centres) such topics as means of protection are covered, as well as physical security and active security, detention, self-defence, communication systems, computer systems etc.

Paragraph 162 (Disciplinary regime and use of means of restraint)

The CPT recommends a review of the application of disciplinary procedures in the l'Alzina Education Centre, and for appropriate steps to be taken to ensure that no disciplinary sanction is imposed without adequate proof. In addition, it would like to be informed of the outcome of the appeal lodged by the minor in a particular case.

The disciplinary regime in Educational Centres is covered by Article 60 of *Ley Orgánica 5/2000* of 12 January, regulating the Criminal Responsibility of Minors, whose provisions are stated in Articles 59 to 85 of Royal Decree 1774/2004 of 30 July, which approves the Regulation implementing the *Ley Orgánica 5/2000* of 12 January, and in Articles 36-42 of Act 27/2001 of 31 December, on Juvenile Justice, approved by the Parliament of Catalonia.

Under the provisions of Article 60 of *Ley Orgánica 5/2000* of 12 January, **the disciplinary regime in the Centres is subject to the rule of law and, in particular, to the principles of the Spanish Constitution, to *Ley Orgánica 5/2000* of 12 January, and to Title IX of Law 30/1992 of 26 November on the legal regime of public administrations and common administrative procedure.**

The disciplinary regime accommodates the procedure laid down by regulations and is "intended to contribute to the security and orderly coexistence in the centres and to foster a sense of responsibility and self-control in the inmates" (Article 59 of the Regulation of *Ley Orgánica 5/2000* of 12 January).

The Educational or Juvenile Justice Centres, including *l'Alzina*, apply the disciplinary regime under the rule of law and in accordance with the procedure laid down in the aforementioned regulations, which is the only possible way to proceed.

The Directorate-General for the Centres in Catalonia has given **clear instructions to ensure that the disciplinary procedure is always applied in keeping with the legal requirements and limits**. In this regard, two instructions are worthy of note:

1. Circular 1/2008, of 28 April, from the Directorate-General for Juvenile Justice on common criteria for action and operating of juvenile justice education centres, which provides the basic common rules of operation for the Centres, regulating via Articles 76 to 90 the application of the disciplinary regime based on the aforementioned general regulations.

2 Instruction 2/2005, from the Directorate-General for Juvenile Justice, on the forms to be used to process disciplinary proceedings on minors and youths in Juvenile Justice Centres, provides all the steps that must be taken to prosecute and resolve the disciplinary procedures, the action to be taken and the forms that must be used at each phase of the procedure.

Both instructions guarantee all the formalities called for in the law and regulations in force to prosecute and to resolve, including, of course, the need for sufficient evidence in order to issue a punitive decision.

The **very serious disciplinary offences** described by Article 38.2 of Act 27/2001 of 31 December and paragraph (g) of Article 62 of the Regulation approved by Royal Decree 1774/2004, of 30 July, include **bringing in, possessing or consuming toxic drugs, psychoactive substances or narcotics, or alcoholic beverages**.

The vast majority of the inmates in the *l'Alzina* Education Centre were regular users of hashish and marijuana before entering the Centre, and many of them used other psychoactive substances. Although there is a total ban on bringing in, possessing or consuming such substances in the Centre and security checks are carried out by the centre to prevent them from being brought in or possessed, some young people manage to bring them in for their own use or that of other inmates, taking advantage of their authorised temporary leaves or those of other inmates, or the visitors they receive.

Within the limits of current legislation, the *l'Alzina* Juvenile Education Centre and the other Centres have a duty to prevent hashish and marijuana being brought in and consumed. This is not only for the negative consequences they have on the juveniles' physical and mental health, but to prevent a range of attitudes and behaviours associated with drug use among inmates, such as aggression, coercion, blackmail, etc., Such behaviour has sometimes been taken into the inmates' families.

The problem of substance abuse in the l'Alzina Centre has been approached from two sides:

1 Educational intervention and psychological treatment through the Tutor Programme, the Health Education Programme, the Treatment Programme for Drug Dependencies and other addictions, and other addictions, and individualized intervention from the Centre's psychologists.

2 Increased controls and records, and the application of disciplinary measures when there is evidence of the possession or consumption of substances.

When **an inmate is caught in possession of substances** that could be toxic drugs, psychoactive substances or narcotics, the **Centre requests an analysis of the substance to confirm that it is a banned substance**. The substances confiscated are delivered to the Forensic Science Division of the *Mossos d'Esquadra*, who take them to be analysed at the Territorial Drug Laboratory belonging to the Spanish Government Sub-delegation's Health Area. **If the test is positive, disciplinary proceedings are opened until an appropriate resolution is agreed upon.**

When an inmate is **caught smoking** substances that may be toxic drugs, psychotropic or narcotic substances in their room, **disciplinary proceedings are opened for serious misconduct consisting of disobeying the orders and instructions received from the Centre's staff**. This is provided for in Article 38 3 (f) of Act 27/2001 of 31 December on Juvenile Justice, since the Centre's rules prohibit inmates from smoking inside the rooms. If there are traces of the substance consumed, they are taken for analysis. If there are no traces to analyze, urine samples are used to detect consumption, although these are voluntary and the inmate may refuse to give them. If the smoked substance is marijuana or hashish, the only sign of use is the characteristic smell that these substances give off. Sometimes, the evidence of marijuana or hashish by its smell affirmed by several educators has been used as evidence to resolve disciplinary proceedings regarding consumption.

However, **following the recommendations of the CPT, the appropriate instructions have been given to the *l'Alzina* Centre and other centres for additional, clearer, more solid and appropriate proof** to be given in future as an essential prerequisite to agree to disciplinary action for consumption.

Regarding **the CPT's request to be informed of the outcome of the appeal lodged by a Colombian inmate** referred to in paragraph 162 of the report, the following is particularly worthy of note. Since no name or any other personal information is provided to enable identification of the inmate in question, it is presumed that this must be of one of the inmates of this nationality residing in *l'Alzina* Centre the day of the CPT's visit. After the Centre examined the aforementioned inmates' records, none of them match all the information provided in the report: this is an inmate of Colombian nationality, who was subjected to a completely naked search on 25 May, 2011. He has been subjected to a disciplinary sanction for marijuana consumption and the sanction was appealed through the Juvenile Court, and the judge commented on it by video-conference on 27th May, 2011. Since the Centre has no more information to identify the person to whom the CPT is referring in its report, the Justice Department requests that the CPT identify this inmate in order to report on the matter.

Paragraph 163 (Sanctions)

The CPT recommends that steps be taken immediately to ensure that no minor is continually kept in solitary confinement as punishment for longer than seven days. In the event that the minor has been sanctioned to remain incommunicado for a total of more than seven days for two or more crimes, there should be an interval of several days interspersed between the seven-day confinement periods. Also, the CPT considers that it would be preferable to reduce the maximum time for confinement that may be imposed on minors as punishment for one specific disciplinary demeanour.

Article 60.3, paragraph (a) of *Ley Orgánica 5/2000* of 12 January states that the sanction of separation from the group for a very serious offence may be for a period of three to seven days.

When imposing the sanction of separation from the group for a single, very serious disciplinary offence, this is never for longer than the statutory maximum of seven days. Typically, this penalty is imposed for less time than the maximum allowed by the regulations. Specifically, the maximum time is only imposed for situations of serious offences related with serious assaults on other inmates or employees.

The Regulation of *Ley Orgánica 5/2000* of 12 January, approved by Royal Decree 1774/2004 of 30 July, stipulates in Article 68.1 that, in cases where the inmate is responsible for two or more offences, sanctions of seven days must be imposed for each one regardless of whether they are resolved in the same case. It also provides for the possibility of imposing a single sanction for all the offences committed, taking the most serious one being prosecuted as the point of reference. As regards implementation of several sanctions imposed in the same proceedings, this rule stipulates that they should be implemented simultaneously if possible. If it is not possible to simultaneously implement them, they are to be implemented by order of severity and duration, and they may not exceed twice the length of time for which the most severe one is imposed.

Under this rule, **a minor may be sanctioned by separation from the group for up to fourteen days**, if this is due to an accumulation of various sanctions of separation from the group for seven days imposed for serious or very serious disciplinary offences resolved in the same proceedings, since fourteen days would be the maximum limit of twice the most severe one imposed.

Paragraph (a) of Article 68.2 of the Regulation approved by Royal Decree 1774/2004 of 30 July sets a time limit for continued imposition of sanctions of separation from the group. It does so by ruling that, in spite of the first section, **under no circumstance of successive implementation of various sanctions imposed in the same or in different disciplinary proceedings shall the minor spend "over seven days or more than five weekends consecutively separated from the group".**

Thus, in the event that a minor or youth is sentenced to more than seven days of separation from the group, they shall never stay in this situation for more than seven consecutive days. If at the end of this period, he/she has separation sanctions pending to comply with, he/she will not re-start another sanction compliance period until at least thirty-five hours have elapsed.

In addition, as stipulated by the Regulation approved by Royal Decree 1774/2004 of 30 July, **the sanction of separation from the group for very serious or serious misdemeanours is an exceptional one. It is only to be imposed in cases where, in committing the offense, the minor has shown clear aggression or violence or where (s)he alters the normal coexistence in the Centre repeatedly and seriously.**

However, according to the CPT's recommendations, **the *l'Alzina* Centre and the other centres have been instructed that the period of interruption should be at least forty-eight hours.**

Paragraph 164 (Means of constraint)

The CPT recommends that the Catalan authorities end the use of this punishment as a means of restraint in Educational Centres. It also recommends adopting alternative techniques of control and restraint that do not inflict pain, taking into account the aforementioned observations.

The first consideration to be made is in the terminology. The report refers to "*medios coercitivos o de coerción*" and in this regard it should be clarified that neither **Ley Orgánica 5/2000 of 12 January on Criminal Responsibility of Minors nor the regulations deriving from it approved by Royal Decree 1774/2004 of 30 July, nor Act 27/2001 of 31 December on Juvenile Justice in Catalonia authorise the use of “means of coerción” (restraint) but “means of contención” (constraint)**, whose meaning in Spanish is substantially different.

Means of constraint (*contención*) are used in Educational Centres in Catalonia in an absolutely restricted way. Only means of constraint (*contención*) authorized by the law are to be used, for the reasons stipulated by the law and in accordance with the procedure described therein and in the Regulations that arise from it. They are only to be used following the **principles of necessity, proportionality and “ultima ratio”**, when there is no other way to prevent the behaviour that justifies its use, and only for the time strictly necessary.

The means of constraint cannot imply, under any circumstances, a veiled sanction or punishment. This is prohibited by the Regulations and this is the restricted way in which the Education Centres for minors are acting. In this regard, it is noteworthy that the **instructions** that the Centres have received from the Department of Justice have always been **particularly scrupulous and observant of the rules when applying means of constraint**.

In Circular 1/2008, of 28 April, from the Directorate-General for Juvenile Justice on common criteria for action and operating of Juvenile Justice Education Centres, which provides the basic common rules of operation for the Centres, stipulates in Articles 42 to 47 the application protocol for applying means of constraint.

- The means of constraint cannot be used without **prior approval from the director of the Centre or the head on duty** at the Centre there at the time, except in cases of urgent need, when they are to be used but immediately informing the director of the means used and the reasons for the urgency.
- If security personnel are involved in applying the means of constraint, **a head on duty from the Centre or a professional employee from the Centre should be present**.
- If means of constraint are used on a minor, **a statement must be made to the juvenile judge and the Directorate-General** within twenty-four hours, in which time the type of constraint used shall be indicated, the reason(s) for using it, the circumstances prior to the incident that gave rise to its use, and the date and time it started and finished. The professionals who intervened in implementing the means of constraint are also requested to draft the corresponding report, which will be given to the management of the Centre.
- **If the means used is physical constraint, mechanical constraint or rubber truncheons**, the Centre's director will demand as soon as possible and in no later than twenty-four hours a medical examination of the minor, with the corresponding report.

The means of constraint that can be used according to regulations include mechanical holding. The aforementioned Circular establishes **the form and procedure to follow when physical holding is carried out on a bed**:

- This means of constraint may only be used when absolutely necessary to prevent injury to the minors themselves, to other people or serious damage to the facilities, and when it has not been possible to discourage the minor from their attitude by other less oppressive means.
- The position of the minor on the bed should be face down, with arms and legs crossed and tied down with straps made of approved textile material used in psychiatry. Under no circumstances is the position described in the CPT report with arms placed diagonally (the so-called "superman position") permitted, authorized or condoned.
- Once the minor is held, a professional designated by the director of the Centre must stay with the minor until the doctor arrives.

- The doctor shall be notified immediately in order to visit the minor in the shortest possible time. If the doctor believes that the mechanical holding on the bed adversely affects the minor's health, the director of the Centre will rule out this means of constraint.
- If before the doctor's visit it becomes clear that the physical holding on the bed is adversely affecting the minor or if the minor's behaviour that prompted the mechanical holding is seen to have abated, the director shall order said means of constraint to be removed.

This means of constraint, and the others provided for in the rules, can never be imposed for a predetermined time. Its duration is strictly limited to the time necessary and it will immediately cease when the youth desists in his/her attitude or when the means is considered unsuitable.

Finally, it is necessary to provide data regarding mechanical holding in Juvenile Education Centres in Catalonia in 2011:

- In 2011, five hundred eighty-six minors passed through the Catalan Education Centres.
- Only thirty-four minors were subjected to mechanical holding on a bed, accounting for 5.8% of the total.
- Out of these thirty-four children, twelve were subjected to these means of constraint in the l'Alzina Centre.

These data **demonstrate that the situation regarding application of this means of constraint in juvenile justice centres in Catalonia is not very significant.**

Paragraph 166 (Complaints system)

The CPT would welcome comments on the complaints system at the Juvenile Offenders Centres, which are apparently perceived as ineffective.

The legal and regulatory rules in force in Spain and, in particular, in Catalonia, as regards juvenile justice includes the right of incarcerated minors and young adults to lodge requests or complaints with the **management of the Centre, with the public body, with the judicial authorities, with the Public Prosecutor, with the Síndic de Greuges and with the Ombudsman.**

The regulations for requests and complaints are contained in Articles 56.2.(k) and 58.2 of *Ley Orgánica 5/2000*, of 12 January, Article 57 of the Regulation, approved by Royal Decree 1774/2004 of 30 July, and in Articles 36-42 of Act 27/2001 of 31 December, on Juvenile Justice, approved by the Parliament of Catalonia.

Requests and complaints can be made by inmates orally or in writing in an open or closed envelope, about matters relating to their incarceration. For this purpose, the Centres have a register for entering the petitions and written complaints submitted by the minors and youths who are inmates, of which a copy is kept. Complaints made verbally are also recorded by writing them down.

Moreover, so that all the inmates may exercise their right to make requests and complaints, the minors and youths receive the information, assistance and support they need from the Centre via the appointed by the director.

When a youth enters the *l'Alzina* Education Centre, the coordinator informs amongst other matters that they have the right to make requests and complaints to the aforementioned authorities and bodies in writing in an open or closed envelope. They are also suitably informed that there is a form available in their coexistence unit to submit requests or

complaints to the director, assistant director, manager, coordinators, the judge upon whom it depends, Public Prosecutor's Office and the Directorate-General responsible. When this form is used by a minor, it is delivered to the recipients in the shortest possible time and the corresponding record is entered in the book provided for this purpose.

Once the complaint or request is resolved, two copies are made (one for the coordinator of the unit where the youth is located and one for the youth). The processing carried out for a request, a complaint or, where appropriate, the resolution adopted, is communicated to the person concerned in writing within thirty calendar days, although in practice the normal period is between two and three.

In 2011, a total of **six hundred and seventy-seven printed documents of requests and complaints** were registered at the *l'Alzina* Education Centre, of which only **ninety referred to complaints**.

In keeping with these regulatory provisions and with the facilities the centre provides for minors, **the requests and complaints system has many kinds of guarantees for inmates**, when one considers the various agencies and authorities to which they can be delivered and the verifications that can be made that these exist via the corresponding registry in the Centres.

The *Síndic de Greuges* itself (the body analogous to the Ombudsman but with a field of action restricted to the territory of the Autonomous Community of Catalonia), in the last annual reports on their actions (presented to the Parliament of Catalonia), recognizes **the hard work carried out by the Department of Justice as regards the Educational Centre's duty to suitably inform inmates of their rights** and of the possibility they have of access to the *Síndic*.¹¹

Likewise, the *Síndic* acknowledges the **positive collaboration with the Department of Justice, especially with the General Directorate for Juvenile Justice, as regards dealing with the complaints files** from the young inmates in the Educational Centres.¹²

¹¹ Report from Síndic de Greuges 2009, pages 173-174.

¹² Report from Síndic de Greuges 2008, page 181.