

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 14 to 18 July 2014

The Spanish Government has requested the publication of this response. The CPT's report on the July 2014 visit to Spain is set out in document CPT/Inf (2015) 19.

Strasbourg, 9 April 2015



MINISTRY OF
INTERNAL AFFAIRS

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 (CPT) presented to the Government of Spain on December, 3rd, 2014, the report on the visit to Spain from 14 to 18 July 2014.

The visit was carried out at the Internment Centres for Foreign Nationals in Madrid and Barcelona, the Adolfo Suárez Madrid-Barajas Airport and Melilla, as a follow-up of the recommendations made in its 2011 report.

The information that the Spanish authorities may provide, within the time period of 3 months granted, on every recommendation and request for information, is the following:

Paragraph 6 (Referred to Melilla)

The CPT recommends that measures be taken to ensure that persons deprived of their liberty under aliens legislation be entitled, as from the outset of their deprivation of liberty and to have access to a lawyer, as well as to benefit from the service of an interpreter, if necessary.

The Spanish legislation on aliens is based on the recognition of the rights and freedoms of foreign nationals in Spain (Article 13.1 of the Spanish Constitution).

From a procedural point of view, the *Ley Orgánica 4/2000* on the Rights and Freedoms of Foreigners in Spain and their Social Integration, specifically includes a set of legal safeguards (Article 20 and subsequent articles), which determine that the administrative procedures be subject, in any event, to the principle of legality and that the persons interested in them benefit from the right to an effective judicial remedy, the right to an effective remedy against administrative acts, the right to free legal assistance and the right to an interpreter.

Article 22 of the Organic Law 4/2000 says, in relation to free legal assistance, the following:

1. Foreign nationals in Spain have the right to free legal assistance in proceedings to which they were parties, whatever the jurisdiction applicable, on the same terms as Spanish nationals.
2. Foreign nationals in Spain have the right to legal assistance in the administrative proceedings that could lead to denial of entry, removal or deportation from the Spanish territory and in all the proceedings as regards international protection, as well as to the assistance of an interpreter if they do not speak or understand the official language spoken. These assistances shall be free of charge when they lack sufficient financial resources in accordance with the criteria established in the legislation governing the right to free legal assistance.
3. In the administrative proceedings against final decisions regarding denial of entry, deportation and expulsion, the recognition of the right to free legal assistance will require the relevant application made under the terms provided by the rules governing/on free legal assistance.

The same guarantees of legal assistance and of an interpreter are referred to/included in RD 557/2011 approving the Regulations of the LO 4/2000 in the conduct of administrative proceedings that may lead to denial of entry, deportation or expulsion from the Spanish territory (Article 15.1 c, regarding denial of entry, Article 23.3, regarding deportation and Article 227.3 regarding expulsion orders, of RD 557/2011).

Within the scope of the Code of Criminal Procedure (LECRIM), Article 520 guarantees all persons detained or held in police custody, therefore including detained foreign nationals, the exercise of all means of defence that the system of laws makes available, meeting fully the fundamental right to effective judicial protection enshrined in Article 24.2 of the Spanish Constitution.

The LECRIM carefully shapes the right to legal assistance, even against the will of the foreign national, and so:

It establishes the right to appoint a lawyer (520.2.c), the police having to refrain from making recommendations for the choice (520.4) y to require his presence as soon as possible.

Where the person detained or imprisoned does not appoint a lawyer, a court-appointed lawyer shall be designated.

To ensure this, the police must require, in a reliable manner, the legal assistance in a “way that allows the Bar Association to be notified of the name of the lawyer appointed by the latter or of the request to be assisted by one appointed by the court” (520.4).

The LECRIM regulates the content of the assistance, by stating at paragraph 520.4 c) that the duty of the lawyer is, besides assuring the rights of the detainee), to meet privately with the detainee on completion of the proceedings in which he took part. The detainee may then ask the lawyer to apply all measures that can be used to terminate the enforcement of any administrative decision of expulsion or deportation.

Therefore, in all expulsion and removal procedures are considered a whole range of guarantees and safeguarding of fundamental rights, without any margin for exceptions, irrespective of the personal circumstances or the location (including Melilla).

Paragraph 9

Spanish legislation permits foreign nationals detained in the CIEs to seek asylum and, in the course of the visit, the delegation was informed that several foreign nationals held in the centres had an asylum claim still pending before the competent authorities. The CPT considers that asylum seekers should only be detained as a last resort, for the shortest possible duration, and after other, less coercive, measures have proven insufficient to ensure their presence. Further, in those instances where there are exceptional reasons for depriving a person of his/her liberty while awaiting an outcome of his/her asylum application, such reasons should be fully documented. When asylum seekers are deprived of their liberty as an exceptional measure, they should be kept separately from foreign nationals who have not lodged an application for international protection. The CPT invites the Spanish authorities to take the necessary steps to comply with the abovementioned precepts.

In pursuance of Article 19 of the Law 12/2009, regulating asylum right and international protection, the foreign national that submits an application for asylum or for international protection shall not be the subject of a decision of return, removal or expulsion until a decision has been given on the application or it has not been admitted.

In this sense, Article 25.2 of the Law 12/2009 establishes that when the application for international protection has been submitted in a Centre of Internment of Foreigners (CIE), its processing should comply with the provisions for the applications for asylum at the border, and those declared to be eligible should be subject to an urgency procedure.

The lodging of an application for asylum in a CIE is done with all legal guarantees laid down in the Law (among which are the right to legal assistance, the right to an interpreter, etc.), including the intervention of the UNHCR representative, as established in Article 34 of the Law 12/2009.

Therefore, the maximum time that an asylum seeker can stay in a CIE (since he was already placed there at the moment of application) is 8 days, the time needed for the procedures at the border. After that, either the application has been admitted or he/she shall be released.

Paragraph 10

The CPT recommends that the Spanish authorities take the necessary steps to stamp out ill-treatment at the Zona Franca CIE, including appropriate investigations and holding the officers concerned responsible. Further, staff at both centres should be regularly reminded that foreign nationals should be treated with respect and that any form of ill-treatment - including verbal abuse- is illegal and will be sanctioned accordingly.

Royal Decree 162/2014, of 14 March, by which the internal rules of procedure of immigration detention facilities have been approved, that develops their regulation after the important changes introduced in the *Ley Orgánica 4/2000* on the Rights and Freedoms of Foreigners in Spain and their Social Integration through reform of the *Ley Orgánica 2/2009*, aims at improving the guarantees scheme and the judicial control of the CIEs.

Article 62 of the *Ley Orgánica 4/2000*, paragraph 6, establishes the competence of the investigating magistrate of the place of arrest to authorize and, when appropriate, to withdraw the internment of the foreign national for whom this precautionary measure has been requested.

Ley Orgánica 4/2000 establishes a dual judicial guarantee, creating the post of Control Judge, whose duty is assumed by the investigating magistrate of the place where the Centre is located, and being necessary to designate a specific court in the judicial districts where there is more than one. His duty is to ensure that the rights are respected for the duration of the precautionary measure. The Control Judge will be informed of the complaints and requests filed by the inmates whenever they affect their fundamental rights and he would be allowed to visit them when he becomes aware of a serious infringement or when he considers it appropriate (Article 62.6 *Ley Orgánica 4/2000*).

The investigating magistrate overseeing the stay becomes thus a guarantee for the inmate's rights. It is the highest monitoring body of the performance of the police officers within the framework of their competences as regards security at the CIEs, and also a safeguard in their performance by virtue of its independence and impartiality.

It should be stressed that there are two new important points already introduced in the Law and developed by the Regulations: the right of the inmates to contact non-governmental organizations, both national and international, that work for the protection of immigrants and the right of the said organizations to visit the centres, as well as the existence of a legal advice service which provides guidance to inmates under conditions of confidentiality. Several collaboration agreements have been concluded with a number of Bar Associations.

Also, RD 162/2014 specifically mentions in Article 50 the control and inspection mechanisms stating that regardless of the competences of the judicial authority, the National Police, through its own units, shall be entitled to carry out inspections of the centres and of their staff. Similarly, the Inspection Services of the State Secretariat for Security shall also carry out the duty of control and inspection of the centres. Finally, it states that the task assigned to the national and international bodies of protection of human rights with their own competences to visit and inspection the centres shall be facilitated.

All these measures are currently being implemented on an ad-hoc basis in the day-to-day functioning of these centres, as well as regards the continuous judicial control as the inspection of the same by the administrative bodies themselves, and the visits and the subsequent recommendations made by international and national bodies (particularly by the Ombudsman, as National Mechanism for the Prevention of Torture).

All complaints of alleged ill-treatment by police officers at the CIEs are investigated by the judicial authority, respecting the principles of independence, legality and impartiality, conducting all necessary investigative procedures (identification of officers, taking of evidence, medical and forensic checkups, etc.).

The Spanish Monitoring Centre on Racism and Xenophobia (OBERAXE), attached to the General Secretariat for Immigration and Emigration of the Ministry of Employment and Social has among its duties the collection and analysis of information on racism and xenophobia for the knowledge of the situation and its perspectives of evolution.

Within this frame, the OBERAXE launched the project “Training of Law Enforcement Agencies in the identification and recording of racist or xenophobic incidents (FIRIR)”, whose objectives were to improve training in the fight against racism and xenophobia and no-discrimination for the Law Enforcement Agencies at national, autonomous and local level, providing the tools for specific training in the criteria to be used for the efficient detection and recording of “racist and/or xenophobic incidents”, as well as to share the training acquired, in order to raise awareness among all stakeholders, particularly the Law Enforcement Agencies.

Based on this project was drafted a “Support Manual for the Training of Law Enforcement Agencies in the identification and recording of racist or xenophobic incidents”, during 2012 and 2013 (available in Spanish and English), which offers a detailed information on: key concepts, international and national perspective on the recording and identification of racist or xenophobic incidents, police activities necessary to identify and to record racist or xenophobic incidents, selection of good police practices and recommendations for the elaboration of a protocol of police action in regard to racist or xenophobic incidents.

This Manual has made possible that the training and development schools of the Law Enforcement Agencies implement specific training in their formative modules. So far, 165 trainers of trainers have taken part in the training activities and have, in turn, trained 20 000 specialists of the Guardia Civil, National Police, Regional Police (Ertzaintza, Mossos d’Esquadra and the Chartered Police of Navarra) and Local Police.

In addition to the FIRIR project, we should point out the training and awareness actions regarding human trafficking for the purpose of sexual exploitation carried out for the Law Enforcement Agencies. These actions have been developed by two NGOs, APRAMP (Association for the Prevention, Rehabilitation and Care of Prostitutes) and the Spanish Red Cross, with the financial support of this SGIE. The Red Cross, especially, has conducted during 2014 three editions of a

course on detection and intervention with victims of human trafficking, with the participation of professionals from the Law Enforcement Agencies. For its part, APRAMP has conducted in 2014, among other actions, seven training sessions in the assistance to victims of human trafficking for the purpose of sexual exploitation, for Local Police and National Police officers.

Paragraph 12

The CPT urges the Spanish authorities to ensure the physical integrity of every foreign national detained at the Zona Franca Centre, through the establishment and implementation of an anti-violence strategy.

In Articles 48 and 49 of RD 162/2014 are established specific provisions for the training of the staff members of the centre and the rules of conduct for them.

As regards training, Article 48 states that the General Directorate of Police shall promote regular and continuous training activities for National Police officers and other government employees and officials at the centres, in the issues of human rights, arrangements for aliens, security and prevention, as well as gender approach and violence against women.

In this sense, training courses are currently held at regional level in every centre for officials serving in these centres on regulatory, safety and human rights issues. The first course on CIEs at national level is planned for April 2015. In addition to legal training, subjects on psychosocial strategies at the CIEs, treatment of vulnerable people, conflict resolution and code of conduct will also be addressed. Among the rapporteurs there will be members of the Ombudsman Office, of the prosecution services, of NGOs and of the UNHCR.

Article 49 adds mandatory rules of conduct for the staff members of the centre. The work of police officers appointed at the centre shall be in accordance with the principles and rules of conduct established in *Ley Orgánica 2/1986*, of 13 March, of Law Enforcement Agencies, and with its related implementing legislation. It should be pointed out that the officials serving at the centre shall be correct in their relations with the inmates, shall ensure the integrity, dignity and impartiality in their actions and shall prevent any abusive, arbitrary or discriminatory practice, including by third parties. Failure to comply with these rules will give rise to the opening of disciplinary proceedings established on the rules governing the disciplinary regime applicable to members of the National Police.

Paragraph 13

The CPT recommends that the Spanish authorities ensure that security staff working at the CIEs receive the necessary training in order to prevent and tackle violence among detained foreign nationals.

(Please, see answer to paragraphs 10 and 12).

Paragraph 14

The CPT recommends once again that the Spanish authorities put an end to this practice; staff in CIEs should address detainees by their names.

With regard to the recommendation of the Committee on bringing to an end the practice followed at the CIEs of addressing the inmates by their arrest number instead of using their names, it should be pointed out that inmates placed in detention centres are not addressed by their arrest number. RD 162/2014, of 14 March, approving the Rules of Procedure and Internal Regime of the CIEs (Reglamento de funcionamiento y Régimen Interior de los CIEs) expressly states in Article 16 paragraph 2 that foreign nationals placed at the CIEs will be guaranteed, subparagraph b), that “the persons interned shall be designated by their names, unless otherwise expressly stated on the part of the interested party”.

In this sense, in 2014 was addressed a suggestion made by the Ombudsman, on the occasion of the visit to the CIE in Madrid, in which he insisted on “Giving the appropriate instructions to all officials serving at the CIE in Madrid, so that the calls to inmates over the loud-speaker system when they have the visit of their lawyers are made using their names, surnames and file number”.

In response to the Ombudsman, it was stated that the Director of the Centre had issued an instruction, of which officials were already aware, regarding the way to proceed when addressing an inmate for the calls over the loud-speaker system. In this instruction the appropriate orders to all officials were given, the literal transcription of the same being as follows: “The calls to the inmates over the loud-speaker system, whether directly or by any other means, will be made using their name, surname and file number”.

Paragraph 15

The CPT recommends once again that the Spanish authorities take the necessary steps to avoid detaining persons under aliens legislation in a carceral environment. In this context, it recommends that steps be taken at both centres, and if appropriate in all the CIEs, to:

- **remove the shutters from the windows in order to ensure access to sufficient natural light;**
- **provide each multi-occupancy cell with a call system, table and chairs and ensure the functioning of the washbasins;**
- **ensure that detainees have ready access to a proper toilet facility at all times, including at night;**
- **review the diversity of the food offered.**

The architectural design done by technicians included these shutters. They are part not only of the premises where the inmates are placed, but also of the rest of premises that are part of the CIE complex in Madrid. They try to adapt to the local climate, characterized by the abundance of sunlight and also of heat, due to an intense solar radiation.

The cells at the internment centres are currently equipped with calling systems.

As regards the table and the chairs, there are not provided exclusively for security reasons.

The internment centres in Madrid and Barcelona have in-cell sanitary facilities.

With regard to food, it should be stressed that Article 14 of RD 162/2014 gives the health care services the task of inspecting “the condition, preparation and distribution of the food, that will be the suitable for a normal diet for the foreign nationals interned, taking into consideration the necessary adjustments due to illness or religious belief, or when a physician's discretion, require certain foreign”.

Paragraph 16

The CPT calls upon the Spanish authorities to revise the official occupancy level to ensure that every person has at least 4 m² of living space, any space taken up by in-cell sanitary facilities should not be included in this calculation. Further, the allocation policy at the Aluche Centre should be immediately revised in the light of the above recommendation.

The current premises do not allow complying at all times with the distribution of the space suggested. However, considering the circumstances of occupancy at any given time, we try to distribute the space according to the personal needs.

Paragraph 17

At the Zona Franca Centre, the delegation received several complaints from detainees regarding the presence of bed bugs and a doctor at the Centre confirmed that it was a recurrent problem. The CPT invites the authorities to take the necessary measures in order to properly resolve this problem.

There is currently no problem at the Centre in Barcelona regarding the presence of parasites.

The health care service of each Centre has the task, among others, of supervising the services of the periodic health control checks, the hygiene, the heating, the lighting and the ventilation of the premises.

As soon as an incidence of this kind is detected, socialized companies proceed to the inspection and disinsectisation of the spaces and objects affected.

Paragraph 18

The CPT recommends that the Spanish authorities pursue their efforts to offer activities of a constructive nature. Further, the closed door policy should be reviewed.

The new Regulation of the Internment established through RD 162/2014 aims at, among other things, creating two differentiated scopes with different objectives. On one hand, the safety of the centres and of the persons that are in them, that must be guaranteed by the National Police. And on the other hand, the assistance aspect, that must be assumed by specialized staff from outside

the police, considering the possibility of signing agreements or conventions with entities, institutions or organizations, both public and private, by which the provision of services can be outsourced without affecting the competences, responsibility and other functions.

In this sense, the Ministry of the Interior has signed a collaboration agreement with the Red Cross for the provision of social and humanitarian assistance at the CIEs. The amount and funding of the subsidization is for a total amount of 400 000 euros per year for the Centres in Madrid and Barcelona.

Paragraph 19

As was the case in 2011, health care in both CIEs was contracted out to a private company. Outsourcing of health-care can lead to cost-efficiency gains but may also have a negative impact in the provision of health-care. The CPT considers that a robust oversight and audit mechanism should be established to ensure that private contractor(s) provide a quality service to the standards required. The Committee would like to receive the comments of the Spanish authorities on this matter.

The Internment Centres have a medical service available provided by medical practitioners, formed by a general practitioner and an ATS-DUE (Technical Healthcare Assistant) or the holder of a University Nursing Diploma), that guarantee this service in person at the Centre during most part of the day. In addition, health care is guaranteed through the emergency services and, when necessary, upon prescription by the said services, through the transfer of the inmate to the referral hospital.

The hiring of the healthcare service provided at the CIEs is subject to the Public Procurement Law and must meet the requirements established in the tender books and guarantee the provision of the healthcare service in optimal conditions. The company that is currently providing this service is "Clínica Madrid".

The General Secretariat for Immigration and Emigration (SGIE) of the Ministry of Employment and Social Security, in close collaboration with the General Directorate of the Police, keeps running a system that allows the healthcare services of the Centres for Temporary Stay for Immigrants (CETI) in Ceuta and Melilla to send to the healthcare services of the Foreign Nationals Internment Centres (CIE) the medical information of the foreign nationals that are transferred from the first to the latter. From the SGIE has been transferred the order to the direction of both CETI so that their

healthcare services can draw a comprehensive report that includes the necessary information for the proper care of every person, and that the said report is forwarded to the healthcare services of the CIE when the foreign national is transferred.

In addition to this mechanism, the SGIE is considering the drafting of a Performance Protocol that adds the General Secretariat for Health in order to articulate by electronic means, which will be an additional guarantee as regards safety, agility and protection of personal data.

Paragraph 20

The CPT recommends that steps be taken at both Centres to ensure regular consultations with a dentist and a psychiatrist and, at the Aluche Centre, with a gynecologist for foreign national women.

(Please, see answer to paragraph 19, in particular that referred to the transfer to the referral hospitals).

Paragraph 21

The CPT recommends that measures be taken at the Zona Franca Centre to ensure that all medical examinations be conducted out of the hearing and -unless the doctor concerned expressly requests otherwise in a given case- out of the sight of police staff.

In all medical checkups of the inmates at the Centres carried out by the healthcare services, the confidentiality of the interview practitioner/patient is tried to be preserved at all times, this being altered only by safety reasons or when the physician or registered nurse require the presence of the police.

Paragraph 22

The CPT recommends that steps be taken to ensure that health-care staff have access to qualified interpreters, when necessary.

Article 16 of RD 162/2014 addresses the rights of the inmates, stating in its subparagraph 2 a) that the inmate has the right to be informed in a language that he/she can understand, of his/her situation and of the judicial and administrative decisions that affect him/her. Also, subparagraph j) states that the inmate has the right to the assistance of an interpreter, if he/she does not understand or speak Spanish, free of charge if he/she lacks sufficient financial resources.

In accordance to this legal status, the National Police has hired, following calls for tender under the Public Procurement Law, the services of “Seprotect”, a Company specialized in the translation and interpretation of languages, that provides the necessary translators and interpreters for the Centres.

Paragraph 23

The Committee recommends that the necessary measures be taken to ensure that in all CIEs, records drawn up after the medical examination of a detainee -whether newly arrived or following a violent incident in a Centre- contain:

- i) an account of statements made by the person which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment),**
- ii) a full account of objective medical findings based on a thorough examination, and**
- iii) the doctor's observations in the light of i) and ii), indicating the consistency between any allegations made and the objective medical findings.**

The record should also contain the results of additional examinations carried out, detailed conclusions of specialised consultations and a description of treatment given for injuries and any further procedures performed.

Further, recording of the medical examination in cases of traumatic injuries should be made on a special form provided for this purpose, with body charts for marking traumatic injuries that will be kept in the medical file of the detainee. Further, it would be desirable for photographs to be taken of the injuries, and the photographs should also be placed in the medical file. In addition, a special trauma register should be kept in which all types of injury observed should be recorded.

Finally, steps should be taken to ensure that, whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by the detainee (or which, even in the absence of allegations, are indicative of ill-treatment), the report is immediately and systematically brought to the attention of the relevant prosecutor, regardless of the wishes of the person concerned.

With regard to the prevention of alleged ill-treatment, reference is made to Paragraph 10. However, the control and inspection mechanisms provided for RD 162/2014 in Article 50, and in particular the judicial control on any violent incident in which police officers or in-house staff may have resulted injured, as well as the investigation of any alleged case of ill-treatment.

Apart from the assessment and the seriousness of the injuries that may be carried out by the health services at the centre or by other medical practitioners from the Public Health Service, the aetiology of the injuries should be established by the forensic doctors, as qualified professionals working for the Judiciary and with competence to issue legal medical reports and opinions during the court proceedings.

In this sense, the instrument used by the medical practitioners and forensic doctors to effectively assess the alleged torture or ill-treatment cannot be decided by the Administration, regardless of the Istanbul Protocol, mentioned in the report of the Committee, being considered as a useful tool for it. However, this Protocol, a Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, despite being under the aegis of the UN Office of the High Commissioner for Human Rights, is a guide of good practices for the recognition and investigation of such situations.

Paragraph 24

The CPT invites the Spanish authorities to take the necessary measures to permit longer visits.

Visiting arrangements for family members or other persons to the inmates at the Centres are regulated in detail in Article 42 of RD 162/2014, and must be supplemented with the rules of internal governance and functioning of each Centre which, in any event, will have to comply with the provisions of the Regulation.

“1. The visits of family members and other persons will take place only with the constraints derived from the custody of the inmates, their safety and health, the capacity of the premises and the rules of internal governance and functioning of the centre.

2. The direction will ensure that inmates and visitors are previously aware of the visiting hours, which should be posted in a visible place outside the centre.

3. The foreigners interned shall be able to communicate freely within the established visiting hours. However, in the event that the requests for communication exceed the capacity of the premises, the days of every week and the duration of the visits may be limited, with a minimum of thirty minutes for visitors, unless they are family members, lawyers, and diplomatic or consular representatives.
4. The number of persons that can communicate simultaneously with the same foreigner will be determined in the internal rules, depending on the characteristics and the possibilities of every centre.
5. The right to privacy in the course of these communications shall be ensured. They will take place only with visual surveillance, unless otherwise stated by judicial ruling.
6. For the adequate development of the interviews, the centres shall have the corresponding lawyer's parlor and visiting room, avoiding the gathering of large groups that would hinder the understanding between the persons communicating or would not allow the necessary privacy of communications".

Paragraph 25

The CPT would like to receive confirmation that the partitions at the Zona Franca Centre have been removed.

Further, the Committee reiterates its recommendation that detainees in all the CIEs be able to receive visits without physical separation, except in individual cases where there may be a clear security concern.

It is confirmed that the works to remove the partitions in early December 2014 finished.

Paragraph 26

The 2014 Royal Decree provides that security staff working at the CIEs must undergo specific training focusing notably on interaction with detained persons and prevention of ill-treatment. The delegation was informed that staff received training on the legal framework of the aliens legislation before their posting to a CIE. However, the CPT notes that custodial staff were police officers who were neither recruited nor specifically trained to operate in detention centres. In particular, there was no indication that they received training on topics such as inter-cultural communication, physical techniques of restraining detainees or prevention of ill-treatment.

The CPT recommends that steps be taken to ensure that police officers assigned to work in CIEs receive training on the above-mentioned topics.

This issue has been addressed in the arguments presented in Paragraphs 10 and 13.

Paragraph 27

The CPT recommends that police officers no longer carry truncheons openly within the detention area. If it is deemed necessary for staff to possess such equipment, it should be stored in a dedicated area, easily accessible in case of need. Further, police officers should be trained in the application of control and restraint techniques.

As was indicated above, the National Police is in charge of the safety of the internment centres and of the persons placed in them. In this sense, Article 11 in its paragraph 4 states that “the safety unit will assume the protection, custody and maintenance of the order, both inside and outside the premises. In those areas or spaces where there is good reason for it, it would be possible to be at service without carrying firearms. This measure shall be proposed by the director of the centre and authorized by the General Department on Alien Affairs and Borders”. The Regulation makes provision for exceptional circumstances in the case of firearms, an element that is part of the police uniforms, although never for defence.

Ley Orgánica 2/1986, of 13 March, on the State Security Forces, states in the explanatory memorandum that police officers are the axis of a difficult balance, of weights and counterweights, of obligations and entitlements, since they must protect the life and integrity of persons, but they are forced to carry arms; they must treat correctly and carefully the members of the community, but they must act with determination and energy and decision when circumstances require it”.

It is necessary to recall that provided for in Article 49 of RD 162/2014, paragraphs 1 and 2.

“1. The duty of police officers serving at the centres shall comply with the principles and rules of conduct established *Ley Orgánica 2/1986*, of 13 March, on the State Security Forces, and with its related implementing regulations.

2. In particular, they shall be correct when dealing with the inmates, they shall ensure the integrity, dignity and impartiality in their actions and they shall avoid any abusive, arbitrary or discriminatory practice, either by them or by a third party”.

Article 5 of *Ley Orgánica 2/1986*, where are set the basic principles for the performance of the Law Enforcement Agencies, it is explicitly states that “in performing their duties, they shall act with the necessary determination and without delay when it depends on it the prevention of a serious, immediate and irreparable damage; being governed when doing so by the principles of consistency, appropriateness and proportionality when using the means available”.

The combination of that provided for in the two said regulations frames the recommendation of the Committee as regards the use of police defence. Police officers that serve at the Internment Centres have, among other tasks, the obligation of ensuring the safety and they must do it respecting the principle of proportionality when using the statutory means, using them restrictively and as a last resort to ensure the integrity of persons.

Paragraph 28

The CPT recommends that placements in temporary isolation at the Zona Franca CIE be always carried out in conformity with the applicable rules and properly recorded in both the individual detainee file and in a specific register.

With regard to Article 57 of RD 162/2014, the measures of containment or preventive segregation of inmates to avoid acts of violence or injuries to themselves or others, to prevent potential escape attempts, or damages to the centre premises, as well as in front of resistance towards the staff at the centre when performing their duties or tasks, are strictly exceptional, and they must be decided by the Director of the Centre in a reasoned resolution forwarded to the judicial control magistrate.

As regards the recommendation of the Committee, we would like to point out that in January 2015 a register for the isolation measures has been put in place.

Paragraph 29

The CPT would like to receive confirmation that a complaint register is now in use at the Zona Franca Centre.

We would like to stress that, in accordance with Article 51 of RD 162/2014 for the appropriate control and inspection of the activity at the centres, at least the following record books are kept:

a) Record book of arrivals and departures of inmates.

- b) Record book of transfers and movements.
- c) Record book of visits.
- d) Record book of mail.
- e) Record book of requests and complaints.

Paragraph 30

The CPT would like to receive supervisory judges' reports regarding both centres for 2013 and 2014.

The Control Courts for the CIEs do not produce annual reports, but in these Courts of Instruction the proceedings initiated and processed following the inmates complaints, are kept. Also, at some point, visits have been made (within the case arising from a claim) to determine the possible deficiencies related to that complaint. In this case, the court file may include a record of the visit (only referred to the complaint raised).

Paragraph 31

The CPT invites the Spanish authorities to take the necessary measures to ensure that foreign nationals are informed in advance of their deportation and may maintain contact with their lawyer until the moment of departure.

All inmates are informed at least 24 hours in advance of the day and time of their expulsion as well as of the details of their flight (origin and destination).

Article 15 of RD 162/2014 states that the Centres will have legal aid services available for the inmates. It also states that "collaboration agreements will be made with Bar Associations in order to establish the operating conditions for the legal aid service in charge of legally assisting the inmates that request it".

In this sense, during 2014, the Ministry of the Interior has concluded collaboration agreements with the Bar Associations of Madrid and Barcelona.

Paragraph 33 (Referred to the Adolfo Suárez Madrid-Barajas Airport)

The CPT considers that a special register should be kept to record all cases in which recourse is had to means of restraint; the entry should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure, the name of the person who ordered or approved it, and an account of any injuries sustained by the foreign national or staff. The Committee recommends that steps be taken to establish such a register.

The final report of the repatriation flights has a section where is made reference to all means of restraint that was necessary to use.

Paragraph 34

The Committee recommends that police officers participating in expulsion/repatriation procedures wear an identification number or name tag.

Except in the expulsions carried out via commercial flights where, complying with the protocol of performance, escorts do not wear vests identifying them, in all the other expulsions the officers wear the police vest with the professional card number.

Paragraph 35

The CPT recommends that law enforcement officials be reminded regularly and in an appropriate manner that any form of ill-treatment including threats and psychological ill-treatment of foreign nationals is not acceptable and will be punished accordingly.

All expulsions are carried respecting human rights and legal safeguards to the maximum. In this sense, we reiterate what has been said in previous paragraphs regarding the training of police officers and the control and inspection mechanisms.

Paragraph 36

The CPT recommends that steps be taken to ensure that foreign nationals returning from a failed deportation be systematically screened by health-care staff.

Article 38 of Royal Decree 162/2014 establishes that if the expulsion or return of an inmate cannot be carried out, his/her return to prison shall be subjected to the provisions on prison committal.

In this regard, Article 38.2 sets out that when his/her recall to prison is conducted the prison's governor shall be given the detailed police report on the circumstances preventing the expulsion, devolution or return, as well as the corresponding medical report should the foreigner had been injured. The judicial authority that ordered his/her recall to prison shall be then immediately informed thereof.

Paragraph 41

The Committee would like to receive detailed accounts of the use of the Readmission Agreement since 1992 and the number of foreign nationals concerned.

Over the last four years, Spain has requested its application four times:

In 2013: Two kamikaze vehicles. One at the border of Beni-Enzar (Melilla) with nine immigrants on board and another one at the border control point of Farhana (Melilla) with 12 immigrants.

In 2014: Two arrivals to the Chafarinas Islands, one at Easter with three adults and 4 minors and another one at Christmas (24th December) with 18 adults and one minor.

Paragraph 50

The CPT recommends that:

- **clear instructions be given to Spanish Law Enforcement officials to ensure that irregular migrants who have entered Spanish territory will not be forcibly returned to Morocco prior to an individualised screening with a view to identifying persons in need of protection, assessing those needs and taking appropriate action;**
- **adequate guarantees in this respect be provided in national legislation.**

In accordance with the provisions of the *Ley Orgánica 4/2000* of 11 January on rights and liberties of foreigners in Spain and their social integration, people entering our country illegally are taken to the Guardia Civil which, in turn, hand them over to the National Police so they can complete the relevant formalities (asylum, return).

If among individuals arrested, after crossing the border, are any with injuries of any type or other health problems, these are directly taken to the healthcare services so they can be seen; just as any other individual entering the territory in that way. The National Police, in order to conform with the provisions of *Ley Orgánica 4/2000*, is informed thereof.

Paragraph 51

The CPT recommends that members of the Guardia Civil be reminded on a regular basis that any excessive use of force is prohibited and will be sanctioned accordingly. Further, they should be trained in preventing and minimising violence in the context of apprehending foreign nationals at the border. For cases in which the use of force nevertheless becomes necessary, Guardia Civil officers need to be able to apply professional techniques which minimise any risk of harm to the persons whom they are seeking to apprehend.

Moreover, a prompt and effective inquiry should be carried out regarding the behavior of the members of the Guardia Civil in relation to the specific incident described above as well as into the fate of the foreign national concerned.

Generally speaking, the performance of the Guardia Civil when exercising its policing functions is based on what is provided for in the basic operational principles set out in *Ley Orgánica 2/86* of Law Enforcement Agencies and, particularly, on the use of the means at its disposal guided by the principles of consistency, appropriateness and proportionality.

More specifically, regarding the border control of Ceuta and Melilla, its performance is governed by the specific planning instruments guiding deployments, the use of resources and personnel of the different police units, as well as the way of acting. The basic operational principles are included in all the planning instruments.

As for the use of force when performing its activities, general rules include provisions such as the respect for the basic operational principles (as established by *Ley Orgánica 2/1986* referred to above), the progressive increased resort to the use of force (depending on the number and attitude of the immigrants) and the progressive use of antiriot means when other means prove to be ineffective (considerable floods of immigrants or immigrants with an aggressive attitude against police forces).

On 15/10/14 there was an incident at the land border of Melilla when a group of about 300 sub-Saharan immigrants tried to enter Melilla massively at 06.25 am through the A-74 (Villa Pilar) area.

As a result, NINE (9) sub-Saharan immigrants managed to enter Melilla illegally, FIVE of whom (5) were taken to *Hospital Comarcal de Melilla* and were discharged few hours later. SIX (6) immigrants were apprehended by the Guardia Civil for disrespect and aggression towards Law Enforcement officers, resistance and disobedience. Due to the extreme violent and aggressive behaviour of the immigrants, SIX (6) civil guards were hurt. One of them was seriously injured when he was savagely kicked by an immigrant and fell from 6 meters. He was taken to *Hospital Comarcal de Melilla* where he was placed on medical observation and had to be on sick leave.

Moreover, Moroccan authorities informed that EIGHT (8) sub-Saharan immigrants had been taken to Nador hospital so as their injuries, cuts and chafings, could be treated, and that the eight of them were discharged that morning. All of them experienced only slight injuries caused when trying to make their way and finding the obstacles separating the common border of both countries.

As already mentioned, after the events regarding the SIX (6) illegal immigrants, these were brought to justice (for alleged crime against Law Enforcement officers) and the corresponding pre-trial proceedings were started.

The most highlighted circumstances regarding the attempt to enter massively the country were the following:

- During the assault, the influx of immigrants knocked down some 20 meters of the fence located in the nearest area of Spain.

- The immigrants attacked the members of the Guardia Civil, trying to hurt them by means of hooks and other type of hand-made tools which had been used to climb the fence. They also threw stones that they had previously taken and had inside their pockets and rucksacks. Many of them had also sticks and used them to hit Moroccan and Spanish Law Enforcement officers.
- With the aim of avoiding Law Enforcement officers' action to prevent them from entering the country illegally, some of the immigrants set fire to some clothes and threw them to the Guardia Civil officers. Others, while shouting "EBOLA" EBOLA", spat at the Guardia Civil officers who were trying to stop them. Others, while also shouting "EBOLA" EBOLA" in an intimidating way, were touching their own injuries and tried to touch the Guardia Civil officer's face that approached them. Another immigrant, in addition to attacking one of the Guardia Civil officers who was near there and had climbed the fence to try to prevent the group from going to that part of the fence, pissed towards him.
- Some days later, after the massive attempt to jump the fence, an NGO broadcasted a video showing an immigrant apparently unconscious. The facts related to that immigrant started before the images showed in the video (which content has been rigged and edited using only selected images or scenes, and thus showing the facts only partially). The moment prior to the one showed in the video, the immigrant had a metal hook that used to attack the Guardia Civil officers who were trying to overpower him. That was the reason the officers had to resort to the minimum force necessary to counterattack his attacks. Once he was disarmed, he used the passive resistance tactic which is commonly used in these situations: he refused to collaborate with the officers so he could be taken to the point in Morocco where he had left the Moroccan territory. Officers had then not choice but to take him to the border holding his limbs. After Moroccan police apprehended him he stood up and was taken to the police vehicles that the Moroccan authorities had already prepared. At that point he was conscious and in perfect health.

This fact is confirmed by the information provided by the Royal Moroccan Gendarmerie according to which this immigrant was not among the 8 injured immigrants who were taken to Nador hospital.

Regarding this matter, it seems important to remind that passive resistance is a widely employed and widespread tactic, used, among others, by immigrants as a firm reaction against Law Enforcement officers exercising the authority. In this particular case, it may seem that he was not conscious, but a physical examination proved that that was not the case; he was just pretending.

Paragraph 54

In the light of the risk of ill-treatment by members of Moroccan Auxiliary Forces of irregular migrants returned to Morocco, the CPT recommends that the Spanish authorities ensure that no person is handed over to them.

Further, the Committee recommends that the Spanish authorities take the necessary steps to ensure that Moroccan Auxiliary Forces officials do not enter Spanish territory to apprehend and forcibly return irregular migrants to Morocco.

In the context of the massive attempts to jump the fence, Moroccan police forces deployed at the common border help trying to prevent the immigrants from getting to the fence. Regarding those illegal immigrants that have not entered Spanish territory since they have not jumped the full fence, but are kept inside its various parts, they collaborate to take those immigrants to the Moroccan part of the fence. On certain occasions, Moroccan police had to shelter between the fences due to the attacks by the flux of immigrants.

It should be known that those immigrants trying to enter Spain illegally and climbing on to the border fences are in a higher physical position regarding Law Enforcement officers who try to stop them and have to climb up from the lower part of the fence. In these cases, attacks against Law Enforcement officers by throwing objects from the upper part of the fence are quite common. In order to carry out their job and exercise authority these officers dislodge the illegal immigrants that have not been able to cross the border and take them to the point from which they left the Moroccan territory. Moroccan police forces collaborate in these situations ensuring that those travelling within Moroccan territory and failing to cross the Hispano-Moroccan border are taken back to that territory.

Paragraph 55

The CPT encourages the Spanish authorities to take the appropriate measures to tackle the problem of severe overcrowding in the CETI.

The CETIs of Ceuta and Melilla are public administration centres designed as first reception places providing basic social services and international protection to immigrants and asylum seekers that have entered illegally these autonomous cities whether by land or sea.

People that are hosted in these centres are free to stay or to leave the centre at their will.

Basic services provided by CETIs are accommodation, clothes, food, cleaning, and safety and health. There are also specialised services (health and training programmes, leisure, sport and culture activities, and legal and social assistance) designed to integrate these immigrants into the Spanish society.

As for the occupational level, the rated capacity for the CETI of Ceuta is of 512 places and that of Melilla of 480. However, there has been a clear overcrowding situation in both centres for many years, particularly in that on Melilla, as it is shown in the table below:

Occupancy average figures		
	Ceuta	Melilla
2005	490	748
2006	556	679
2007	479	504
2008	394	603
2009	426	478
2010	398	492
2011	567	671
2012	443	671
2013	535	773
2014	638	1338

Regarding this situation, the Ministry of Employment and Social Security as well as the Ministry of Interior have continued their efforts to try to increase the number of transfers of people assisted at CETIs to the Iberian Peninsula (whether to the reception centres subsidised by the Ministry of Employment and Social Security or those directly dependent upon it, or to police facilities within the framework of the implementation of expulsion measures from Spanish territory).

As a result of these efforts, 5179 people were transferred in 2014 from the CETI of Melilla to the Iberian Peninsula. Most of the individuals were transferred to hosting centres (4450 people) whether within the framework of the hosting and care programme for asylum seekers and beneficiaries of international protection, or within the framework of humanitarian aid programme.

To conclude, it should also be added that Spain has received EU emergency aid channelled through the European Return Fund. The aid is aimed at strengthening the CETIs' capacity – by adopting the following measures – so that immigrants are hosted under proper conditions.

- Increase the number of personnel working for CETIs. Personnel from both, the Ministry of Employment and Social Security as well as from the two non-governmental bodies (Spanish Red Cross and ACCEM) working for the CETIs and subsidised by that Ministry.
- Refurbish the facilities and supply furniture and equipment such as bunk beds, mattress, pillows, tents, kitchen goods and medical equipment in order to prepare spaces and provide emergency accommodation within the CRTIs for the increased number of immigrants that arrive.
- Increase the supply of material such as clothes, footwear, personal hygiene products and cleaning products for the hosted people.
- Adjust the numbers of contracts to the services that are essential to the CETIs, such as food preparation and serving, cleaning and security services, as well as increased expenditure to the general costs (water and electricity bills, and facilities maintenance service).
- Carry out transfers to the hosting centres in the Iberian Peninsula.

Aid amounts to almost 5 million euros and was received in January 2015.

Madrid, 27th February 2015