



CPT/Inf (96) 9 [Part 2]

**Report to the Spanish Government  
on the visit to Spain  
carried out by the European Committee  
for the Prevention of Torture and Inhuman  
or Degrading Treatment or Punishment (CPT)  
from 10 to 22 April 1994**

The Spanish Government has agreed the publication of this report and of its response. The latter is set out in document CPT/Inf (96) 10.

Strasbourg, 5 March 1996



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**from 10 to 22 April 1994**



**CONTENTS**

Page

Copy of the letter transmitting the CPT's report .....	7
<b>I. INTRODUCTION.....</b>	<b>9</b>
<b>A. Preliminary remarks .....</b>	<b>9</b>
<b>B. Composition of the delegation and establishments visited.....</b>	<b>9</b>
<b>C. Consultations held by the delegation.....</b>	<b>11</b>
<b>D. Co-operation between the CPT and the Spanish authorities.....</b>	<b>12</b>
<b>E. Recourse to Article 8 (5) of the Convention.....</b>	<b>13</b>
<b>II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED .....</b>	<b>15</b>
<b>A. Law enforcement agencies .....</b>	<b>15</b>
1. Torture and other forms of ill-treatment.....	15
2. Material conditions of detention.....	19
a. introduction .....	19
b. Civil Guard establishments.....	19
c. National Police establishments .....	22
d. Basque Autonomous Police (Ertzaintza) establishments.....	24
e. other places of detention .....	25
f. supplementary remarks .....	26
3. Safeguards against the ill-treatment of detained persons .....	27
a. notification of custody .....	27
b. access to a lawyer.....	29
c. access to a doctor .....	29
d. conduct of interrogations.....	30
e. supervision of the situation of detained persons by the competent judicial authority or public prosecutor .....	31
f. custody records .....	32
g. Organic Law No. 1/1992 on the protection of people's security.....	33

<b>B.</b>	<b>Places of detention for foreigners .....</b>	<b>34</b>
1.	Detention Centre for foreigners at Moratalaz.....	34
2.	Detention Centre for foreigners at Barcelona.....	34
3.	Special Transit Area, Barajas Airport, Madrid.....	36
4.	Supplementary remarks .....	37
<b>C.</b>	<b>Prisons .....</b>	<b>38</b>
1.	Introduction .....	38
2.	Torture and other forms of ill-treatment.....	39
3.	Treatment of prisoners considered as "extremely dangerous" or as "unadapted to an ordinary prison regime" .....	41
4.	Conditions of detention in the prisons visited .....	43
a.	material conditions and activities.....	43
b.	contact with the outside world .....	49
c.	execution of sentences in the prisoners' original social environment .....	50
5.	Health-care services.....	51
a.	introduction .....	51
b.	health-care services in the establishments visited.....	51
i.	<i>staff and facilities</i> .....	51
ii.	<i>medical screening on reception</i> .....	53
iii.	<i>medical care provided to prisoners</i> .....	54
iv.	<i>issues relating to HIV</i> .....	56
v.	<i>access to a fully-equipped hospital service</i> .....	57
c.	the General Penitentiary Hospital .....	58
d.	further remarks .....	60
6.	Other issues .....	61
a.	staff resources and training .....	61
b.	the supervisory judge .....	62

<b>D.</b>	<b>Detention Centres for Minors</b> .....	<b>63</b>
1.	Introduction .....	63
2.	Material conditions and activities.....	63
3.	Discipline.....	65
4.	Medical issues .....	65
<b>E.</b>	<b>Psychiatric institutions</b> .....	<b>67</b>
<b>III.</b>	<b>RECAPITULATION AND CONCLUSIONS</b> .....	<b>69</b>
<b>A.</b>	<b>Law enforcement agencies</b> .....	<b>69</b>
<b>B.</b>	<b>Places of detention for foreigners</b> .....	<b>71</b>
<b>C.</b>	<b>Prisons</b> .....	<b>71</b>
<b>D.</b>	<b>Detention Centres for Minors</b> .....	<b>73</b>
<b>E.</b>	<b>Psychiatric Institutions</b> .....	<b>73</b>
<b>F.</b>	<b>Action on the CPT's recommendations, comments and requests for information</b> .....	<b>74</b>
<b>APPENDIX I:</b>		
	SUMMARY OF THE CPT'S RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION .....	75
<b>APPENDIX II:</b>		
	LIST OF THE NATIONAL AUTHORITIES AND NON-GOVERNMENTAL ORGANISATIONS WITH WHICH THE DELEGATION HELD CONSULTATIONS.....	89





Copy of the letter transmitting the CPT's report

Strasbourg, 15 December 1994

Dear Mr Borrego,

In pursuance of Article 10, paragraph 1, of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment, I have the honour to enclose herewith the report to the Government of Spain drawn up by the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) after its visit to Spain from 10 to 22 April 1994. The report was adopted by the CPT at its twenty-third meeting, held from 28 November to 2 December 1994.

I would draw your attention in particular to paragraphs 33, 43 and 175 of the report, in which the CPT requests that certain information be provided within three months, as well as to paragraph 229, in which the Committee requests the Spanish authorities to provide within twelve months a report on action taken upon its report as a whole. The CPT would ask, in the event of the latter report being forwarded in Spanish, that it be accompanied by an English or French translation.

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

Finally, I would be grateful if you could acknowledge receipt of this letter.

Yours sincerely,

Claude NICOLAY  
President of the European Committee for  
the prevention of torture and inhuman  
or degrading treatment or punishment

**Mr Javier BORREGO BORREGO**  
Abogado del Estado  
Dirección General del  
Servicio Jurídico del Estado  
Calle Ayala, N° 5  
MADRID 28001



## **I. INTRODUCTION**

### **A. Preliminary remarks**

1. In pursuance of Article 7 of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment (hereinafter referred to as "the Convention"), a delegation of the CPT carried out a visit to Spain from 10 to 22 April 1994.

The visit formed part of the CPT's programme of periodic visits for 1994, and was the second periodic visit to Spain to be carried out by the Committee (the first visit taking place in April 1991). It should be carefully distinguished from the visit which occurred from 10 to 14 June 1994. The latter visit was one which the CPT considered "to be required in the circumstances" (cf. Article 7, paragraph 1, of the Convention), and was triggered by allegations of severe ill-treatment of persons detained by the Civil Guard received at the beginning of June 1994.

2. The report on the June visit has already been forwarded to the Spanish Government (cf. Part III hereof) and it shall be referred to herein when appropriate. Reference shall also be made to the comments forwarded to the Spanish authorities by letter of 15 March 1994, concerning the response of those authorities to the report drawn up by the CPT following its first periodic visit to Spain.

### **B. Composition of the delegation and establishments visited**

3. The delegation consisted of the following Committee members:

- Mr Claude NICOLAY, President of the CPT (Head of Delegation);
- Mr Constantin ECONOMIDES;
- Mrs Nadia GEVERS LEUVEN-LACHINSKY;
- Mr José VIEIRA MESQUITA;
- Mr Ivan ZAKINE.

The delegation was assisted by:

- Mr Timothy HARDING, Professor at the Institute of Forensic Medicine, Geneva (expert);
- Mr Ole Vedel RASMUSSEN, Surgeon at Bispebjerg Hospital, Copenhagen (expert);
- Mrs Danielle GREE (interpreter) (from 16 to 22 April 1994);
- Mr Eduardo KAHANE (interpreter);
- Mr Claude LORD (interpreter);
- Mrs Viviane PARRA IDREOS (interpreter);
- Ms Melanie ROE (interpreter).

The delegation was also accompanied by the following members of the CPT's Secretariat:

- Mr Trevor STEVENS, Secretary of the CPT;
- Mr Jan MALINOWSKI.

4. The delegation visited the following places of detention:

Prison establishments

- Barcelona Prison for Men (Modelo)
- Madrid I Prison (Carabanchel Hombres)
- Madrid Prison for Women (Carabanchel Mujeres)
- General Penitentiary Hospital (Carabanchel)

National Police Stations

- Area 1 District, Calle Guipúzcoa, La Verneda, Barcelona
- Police Headquarters, Via Laietana, Barcelona
  
- Central District, Calle Gordoniz, Bilbao
  
- Central Duty Inspection (Puerta del Sol), Calle Marqués de Pontejos, Madrid
- Central District, Calle de la Luna, Madrid
- Arganzuela District, Ronda de Toledo, Madrid
- Minors Police Unit (Grume), Calle Hermenegilda Martínez, Madrid
- Barajas Airport District, Barajas, Madrid
- Parla Police Station, Juan Carlos I, Parla, Madrid

Civil Guard establishments

- La Salve District Barracks, Plaza de la Salve, Bilbao
- General Directorate, Calle Guzmán el Bueno, Madrid
- Outer Madrid Headquarters, Sector Escultores, Tres Cantos, Madrid
  
- Guipúzcoa Headquarters, San Sebastián

Basque Autonomous Police (Ertzaintza)

- Ertzaintza Station, Plaza Easo, San Sebastián
- Ertzaintza Station, Sestao
- Ertzaintza Station, Tolosa

Other places of detention

- Joint Municipal and National Police Station, Las Ramblas, Barcelona
- Detention Centre for foreigners, Calle Guipúzcoa, La Verneda, Barcelona
- Penitentiary Unit, Terrassa Hospital, Barcelona
  
- Municipal Police Headquarters, Bilbao
  
- Cells at the Audiencia Nacional, Madrid
- Detention and Reform Centre for Minors "El Madroño", Madrid
- Detention and Reform Centre for Minors "Renasco", Madrid
- Detention Centre for foreigners, Calle la Tacona, Moratalaz, Madrid
- Special Transit Area, Barajas Airport, Madrid

In addition, a number of detained persons were interviewed, and specific matters were examined, at:

- Mental Hospital, Santa Coloma, Barcelona
  
- Logroño Prison
  
- Madrid II Prison (Alcalá-Meco)
- Madrid III Prison (Valdemoro)
- Gregorio Marañón Hospital, Madrid

**C. Consultations held by the delegation**

5. The delegation held consultations with the national authorities and with representatives of non-governmental organisations active in areas of concern to the CPT. In addition, numerous meetings were held with local officials in charge of the places visited.

A list of the authorities and organisations with which the delegation held talks is set out in Appendix II to this report.

**D. Co-operation between the CPT and the Spanish authorities**

6. Fruitful discussions were held with the Minister for Justice, Mr Belloch, and senior officials of his Ministry, at both the outset and end of the visit. The CPT is most grateful to the Minister for the substantial amount of time he devoted to discussions with its delegation.

7. The delegation also had useful meetings with the Ministers for Health and for the Interior and senior officials of those Ministries.

The delegation was concerned that the Minister for the Interior and his officials were not aware of the letter which had been sent to the Spanish authorities by the CPT on 15 March 1994. However, by the end of the visit, the Ministry had furnished the delegation with a substantial answer to several of the matters falling under their competence which had been raised in that letter.

8. The delegation had interesting discussions with the acting Ombudsman (Defensor del Pueblo) and staff of the Ombudsman's office as well as with the State Public Prosecutor and judges at the Audiencia Nacional.

9. The delegation also met officials of the Basque and Catalan autonomous communities (both of which have functions in areas of concern to the CPT), including the respective Ombudsmen. These meetings gave rise to very useful exchanges of views.

10. On the whole, the delegation received a very satisfactory reception from both the management and staff at the places of detention visited, including those which had not been notified in advance.

The delegation suffered short delays of some 15 to 20 minutes on its arrival at a few of the places of detention visited (Civil Guard Headquarters in Madrid, Madrid III Prison at Valdemoro, the Bilbao Municipal Police Headquarters). More significantly, there was a delay of approximately 40 minutes before the delegation could begin its visit to the detention area of the Guipúzcoa Headquarters of the Civil Guard at "El Antiguo" in San Sebastián. This delay appeared to be caused by the unwillingness of the components of the chain of command to take responsibility and allow the CPT's delegation to proceed with its work, despite the credentials issued by the Vice-president of the Government of Spain produced by the members of the delegation.

The above delays highlight **the need for States Parties to disseminate to all the relevant authorities, at the appropriate time, detailed information on the CPT's mandate and the obligations of the authorities concerned.**

11. Of course, **it is also important that the contents of visit reports drawn up by the CPT are brought to the attention of all the relevant authorities in an appropriate form.** In this respect, the Committee must point out that the authorities in charge of certain places visited (e.g. the Headquarters of the Municipal Police in Bilbao and the Moratalaz Detention Centre for foreigners) stated that they had no knowledge of the observations that had been made by the CPT concerning those places in its 1991 report.

12. Finally, the CPT wishes to express its sincere appreciation for the considerable assistance provided to its delegation by Mr Javier Borrego, State Advocate at the Ministry of Justice, not only during but also before and after the CPT's visit to Spain. The Committee is also grateful for the assistance provided in their respective autonomous communities by Mr José Luis Aurtentxe, Head of Legal Affairs of the Basque Department of Interior, and Ignasi García i Clavell, Director General of the Catalan Prison and Rehabilitation Services.

**E. Recourse to Article 8 (5) of the Convention**

13. During the meeting held with the Spanish authorities at the end of the visit, the CPT's delegation invoked Article 8 (5) of the Convention and made immediate observations in respect of three matters which, in its opinion, required urgent action: the Central Duty Inspection of the National Police in Madrid (Puerta del Sol), Calle del Marqués de Potejos; the Guipúzcoa Headquarters of the Civil Guard in San Sebastián; and the psychiatric unit in the General Penitentiary Hospital (Carabanchel) in Madrid.

14. The cells of the Central Duty Inspection had already been examined during the 1991 visit, and it had subsequently been recommended that the possibility be explored of withdrawing them from service. The CPT's delegation found that they were still being used and that no significant improvements had been made to them since the previous visit (cf. paragraphs 41 and 42).

Conditions of detention at the Guipúzcoa Headquarters of the Civil Guard were quite unacceptable; the state of this establishment's cells at the time of the visit was such that they were not apt for any detention purposes whatsoever, regardless of the length of detention (cf. paragraphs 32 and 33).

As regards the psychiatric unit situated in the basement of the General Penitentiary Hospital, prisoners were kept there for prolonged periods of time in a setting that can only be classified as anti-therapeutic (cf. paragraph 175).

All three merited the immediate recommendation that they be substantially improved without delay or withdrawn from service. The delegation requested that the Spanish authorities submit a report within six months of the visit, informing it of the measures taken in this connection.

15. During the final talks, the CPT's delegation was informed that the entire General Penitentiary Hospital in Madrid was scheduled to close on 15 October 1994, and further information on all three of the matters which were the subject of immediate observations was subsequently provided by the Spanish authorities on 22 November 1994. This information shall be examined in the relevant sections of this report (cf. paragraphs 33, 43 and 175).





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

### A. Law enforcement agencies

#### 1. Torture and other forms of ill-treatment

16. In the course of the second periodic visit, a number of persons interviewed by the delegation alleged that they had been subjected to **torture and/or other forms of severe ill-treatment** while in the custody of the Civil Guard, both in the region where they had been arrested and subsequently in the Civil Guard Headquarters in Madrid. All of them had been arrested in connection with terrorist-related activities, linked to the ETA or Terra Lliure groups. The forms of ill-treatment alleged were much the same as those described in paragraph 19 of the report on the first periodic visit, particularly frequent reference being made to asphyxiation by the placing of a plastic bag over the head and various types of blows.

Some of the allegations related to periods of custody approximately eighteen months to two years prior to the second periodic visit. This was the case, for example, of the persons interviewed who had been arrested in relation to the activities of Terra Lliure. However, other allegations related to quite recent periods of custody, i.e. within the previous six months. The most recent allegations were made by several persons who had been arrested in Berriozar on 16 March 1994, i.e. approximately one month prior to the visit.

17. The delegation was put in possession of a dossier concerning the arrests of some 30 Terra Lliure suspects in June/July 1992; it contained a significant number of allegations of torture and other forms of severe ill-treatment. As regards more particularly one of the persons concerned who was interviewed by the delegation, medical reports were presented in support of his allegations. These reports recorded bruising in the left palpebral region and a fracture of the left malar bone, and the person alleged that he had received this injury when pushed against a pillar while detained in the Civil Guard Headquarters in Madrid. Bruising in the region of the left eye was also recorded in the report drawn up by the forensic doctor who examined this person during his custody in Madrid, but the doctor suggested that it could have been caused by "restraint manoeuvres". A formal complaint of ill-treatment lodged by the person concerned was subsequently dismissed by the courts.

18. Medical information concerning another person interviewed by the delegation - who was arrested in the Basque country on 27 October 1993 and alleged that he had been subjected to asphyxiation, blows and electric shocks - was forwarded to the CPT by the Spanish authorities after the visit. The CPT notes from this information that the forensic doctor who examined the person concerned while in custody in Madrid recorded that there were no traces of injury; however, a report subsequently drawn up by a forensic doctor in San Sebastián records several haematomas and ecchymoses, the evolution of which was said to be consistent with the person's allegations (on the other hand, the doctor considered that a mark on the left ear was not consistent with the person's allegations of having received electric shocks on that part of his body).

19. The CPT also received after the visit copies of the forensic medical reports drawn up following the examination of the persons arrested in Berriozar on 16 March 1994 while in the custody of the Civil Guard in Madrid (cf. paragraph 16), as well as other medical information in their respect. The reports indicate that three of the six detainees told the forensic doctor that they had received blows to the head, and one of them also complained of blows to other parts of the body (the thorax and abdomen). The forensic medical reports do not record any signs of violence consistent with these allegations. Nonetheless, small or digitiform bruises on the arms of two of the detainees and marks of handcuffs in three cases were observed, and the forensic doctor found that one of the detainees was in a state of severe anxiety and prescribed him an appropriate drug.

20. At the end of the second periodic visit, the CPT's delegation informed the Spanish authorities that in the light of the information at its disposal it could only reiterate the comment made in paragraph 25 of the report on the first periodic visit, namely that it would be premature to conclude that the phenomenon of torture and severe ill-treatment had been eradicated in Spain.

That observation must now be read in the light of the report drawn up following the ad hoc visit to Spain in June 1994, in which the CPT stated that the information at its disposal was sufficient to give rise to legitimate concern about the manner in which at least certain of the 24 persons arrested between 2 and 7 June 1994, as presumed participants in one or more of the offences referred to in Article 384 bis of the Code of Criminal Procedure, were treated while in the custody of the Civil Guard. This led the Committee to recommend that the Spanish authorities carry out, without delay, a general investigation of a thorough and independent nature into the methods used by members of the Civil Guard 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 (cf. Part III, paragraph 34).

21. As regards **other forms of ill-treatment**, some persons interviewed by the delegation alleged that they had been roughly treated by National Police officers or members of the Civil Guard (slapped, punched, kicked or verbally abused) at the time of their arrest and/or in the course of their custody. The number of such allegations was lower than that recorded during the first periodic visit in 1991 (cf. Part I, paragraph 21), but nevertheless remained sufficiently high as to give cause for concern (in particular vis-à-vis National Police establishments in Madrid). In some of the places visited, members of the delegation themselves directly observed a certain degree of disrespect on the part of law enforcement officials towards, or when referring to, detainees.

In this connection, **the CPT wishes to reiterate once again the importance:**

- **of law enforcement officials receiving appropriate training in the art of handling, and more particularly of speaking to, persons in their custody (i.e. interpersonal communication skills);**
- **of senior law enforcement officials making clearly known that the ill-treatment of detained persons is not acceptable and will be dealt with severely.**

22. Naturally, one of the most effective means of preventing ill-treatment by public officials lies in the diligent examination by the prosecuting authorities and the courts of all complaints of such treatment brought before them and, where appropriate, the imposition of a suitable penalty; this will have a very strong dissuasive effect<sup>1</sup>. In this connection, it must be said that in the course of both the April and June 1994 visits, the CPT's delegations were told by several persons who alleged torture and/or other forms of severe ill-treatment by the Civil Guard that they had complained to the judge before whom they were brought about the way they had been treated, but that he had displayed little interest in the matter.

In this respect, **the CPT would like to receive the following information for the three year period 1992 to 1994:**

- **the number of cases in which criminal proceedings have been instituted in relation to allegations of ill-treatment of detained persons by law enforcement officials;**
- **an account of judgments delivered by the courts in cases involving allegations of ill-treatment by law enforcement officials (i.e. brief description of the facts; verdict; if appropriate, sentence imposed).**

The CPT would add that for many of the types of ill-treatment alleged, it is very difficult to obtain medical evidence of their use (cf. also the report on the June 1994 visit; Part III, paragraph 30). Consequently, **public prosecutors and judges should not necessarily treat the absence of marks or conditions consistent with allegations made as proof that such allegations are false.**

23. The existence of an effective mechanism at the administrative level for examining complaints about treatment whilst in the custody of law enforcement agencies and, if appropriate, imposing suitable penalties is also most important. **The CPT would like to receive information on such mechanisms in Spain, including full details of the guarantees ensuring the objectivity and independence of their investigations.**

24. Reference should also be made in this section to the specific subject of the **transfer of prisoners**. In its letter of 15 March 1994 to the Spanish authorities, the CPT commented that it had received a number of reports containing allegations of ill-treatment of prisoners by members of the Civil Guard in the course of their transfer from one prison to another; further, such allegations were made by certain prisoners interviewed during the second periodic visit.

The Spanish authorities acknowledged the importance of this question and informed the delegation that measures to address it were under consideration.

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<sup>1</sup> Cf. also paragraph 72 as regards the desirability of visits by the competent judicial authority or public prosecutor to places where persons are detained by the law enforcement agencies.

25. The Spanish authorities subsequently forwarded to the CPT a "Protocol on transfers", dated July 1994, and instructions issued by the Director General of Prison Services on 26 October 1994 regarding the transfer of prisoners. These texts regulate in considerable detail the process of transferring prisoners and contain important safeguards against ill-treatment. In particular, a prisoner who is the subject of a transfer must be medically examined by the respective prison medical services, both within the 24 hours prior to his departure and on his arrival. In the event of injuries being observed, the central prison authorities (i.e. the General Sub-Directorates of Health and Prison Management) and the competent judge must be informed.

Further, transferred prisoners are to be given an information sheet setting out their rights and duties. This sheet refers inter alia to the right of prisoners to submit complaints about the manner of their transfer to the authorities of the prison to which they have been transferred; a specific 'request and complaints' form has been designed for this purpose.

The CPT welcomes the introduction of the above-mentioned Protocol and the issuing of instructions; **the Committee trusts that they will be strictly applied.**

26. As far as the CPT understands, the Protocol referred to in paragraph 25 does not apply to the transfer of persons in the custody of the law enforcement agencies who have not (yet) been admitted to prison. In this regard, the CPT would recall that during the ad hoc visit to Spain in June 1994, many of the persons met by the Committee's delegation complained about the manner in which they had been transported from the Basque country to Madrid (cf. Part III, paragraphs 18 and 40).

**The CPT would like to receive the views of the Spanish authorities on the possibility of applying to arrested persons a system comparable to that provided for in the Protocol on transfers of July 1994.**

27. In the report on the first periodic visit, the CPT raised the issue of the physical conditions in the vehicles used for transporting prisoners (cf. Part I, paragraphs 129 to 131). The CPT was subsequently informed that the fleet of transport vehicles was being progressively brought into conformity with detailed regulations adopted in April 1990.

The CPT's delegation which carried out the second periodic visit inspected certain Civil Guard vehicles used for transporting prisoners; it noted that the physical conditions were distinctly superior to those observed during the first periodic visit, and included a central unlocking system for use in the event of an accident. One small failing observed was that the back of the prisoners head rested against a bare metal bar, which must prove particularly uncomfortable during long distance journeys; **the CPT invites the Spanish authorities to explore means of remedying this shortcoming.**

Several prisoners complained to the delegation about the conditions of their transport between the Canary Islands and mainland Spain - continuous detention in a cell in the hold of a ship for up to two days, in dirty and dark conditions. **The CPT would like to receive the comments of the Spanish authorities on this matter.**

28. Finally, **the CPT would also draw to the Spanish authorities' attention that several prisoners alleged that handcuffs had been applied unduly tightly during their transport.**

## **2. Material conditions of detention**

### a. introduction

29. The general criteria employed by the CPT vis-à-vis material conditions of detention in establishments of law enforcement agencies should be reiterated (cf. also paragraph 31 of the 1991 report). All cells should be of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, cells should enjoy natural light. Further, cells should be equipped with a means of rest (e.g. a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with a clean mattress and clean blankets.

Persons in custody should be allowed to comply with the needs of nature when necessary in clean and decent conditions, and be offered adequate washing facilities. They should have ready access to drinking water and be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day. Persons held for extended periods (24 hours or more) should, as far as possible, be offered outdoor exercise every day.

30. In its 1991 report, the CPT criticised the material conditions of detention in several of the police and Civil Guard establishments visited and recommended that the situation in those establishments be reviewed. It also recommended that appropriate steps be taken to ensure that the conditions of detention in police and Civil Guard establishments in general meet the criteria set out above.

The observations made during the second periodic visit show that those recommendations have not yet been fully implemented; far from it. Information provided to the delegation at the end of the second periodic visit indicated that substantial amounts of money have been invested in police and Civil Guard premises over the last few years. However, this has not led to substantial improvements in the conditions under which persons are detained in such premises; at least, not in those premises visited by the delegation. The continued use made by the National Police in Madrid of the underground cells at Puerta del Sol is a source of particular concern to the Committee.

### b. Civil Guard establishments

31. The delegation visited four Civil Guard establishments. Two were visited for the first time (Guipúzcoa Headquarters at Intxaurreondo and, in particular, its cellular accommodation at El Antiguo, San Sebastián and the Outer Madrid Headquarters at Tres Cantos, Madrid); and two had already been visited during the course of the first periodic visit (La Salve District Barracks in Bilbao and the General Directorate in Madrid city).

32. Conditions in the El Antiguo detention facilities of the **Guipúzcoa Headquarters of the Civil Guard** at San Sebastián were extremely poor.

The cellular accommodation comprised four very small cells, measuring 2.6 m<sup>2</sup> to 3.2 m<sup>2</sup>, and one cell of approximately 5 m<sup>2</sup> (which despite its size was the narrowest of all the cells - 1.2 m). The cells did not benefit from any natural light, and not all were fitted with working electrical lighting. In the cells where there was artificial light, it was very dim. Further, the cells were inadequately ventilated.

Each of the cells contained a concrete bed block, equipped with a mattress and blankets; however, the latter were in a filthy condition. More generally, the overall state of repair and of hygiene in the cells was totally unacceptable.

The sanitary facilities serving the cell area were in a somewhat better condition, and included inter alia a shower.

33. As already indicated (cf. paragraph 14, second sub-paragraph), at the end of the visit, the delegation made an immediate observation concerning the above-mentioned cells, to the effect that in their current state they were not suitable for any detention purposes whatsoever.

By letter of 22 November 1994, the Spanish authorities forwarded to the CPT copies of two documents dated 17 November, issued by the Director General of the Civil Guard, which acknowledge the existence of serious shortcomings in the cells at El Antiguo. One of the documents consists of instructions to the effect that immediate steps be taken to build appropriate cells at the Intxaurreondo premises (i.e. the location of the Guipúzcoa Civil Guard Headquarters' offices and officer's dwellings).

However, the CPT has received no information on interim measures adopted in respect of the cells at El Antiguo. Moreover, the Committee has received information from other sources which indicates that the said cells, which merited the immediate recommendation that they be substantially improved without delay or withdrawn from service, have continued to be used.

**The CPT would like to receive within three months further information on progress made to implement the above-mentioned immediate recommendation. More particularly, it would like to be informed whether the cells at El Antiguo are still in service and, in the affirmative, what improvements have been made to conditions within them.**

34. The **Outer Madrid Headquarters of the Civil Guard** were situated some 20 kilometres to the north-east of Madrid. In addition to providing centralised Civil Guard services for the Madrid province (excluding Madrid capital city), it served as a local station covering the policing requirements of the district.

In order to cater for the latter needs, the Headquarters had a cell area comprising seven cells, with surface areas ranging from 5.5 m<sup>2</sup> to 6.5 m<sup>2</sup>. Each cell was fitted with a concrete bed block 90 cm wide and detainees were provided with a mattress and blankets. However, the delegation found that the mattresses and blankets were rather dirty. Further, the cells did not have access to natural light and artificial lighting was very poor, as was the ventilation. All the cells had a call bell.

Sanitary facilities consisted of two cubicles, each containing a washbasin and asian toilet; they did not have a door or screen. More generally, the state of cleanliness of the cells and other facilities for detainees left something to be desired.

35. The delegation was told, and was able to verify in the register of detainees kept at the Headquarters, that on average there were 15 to 20 detainees every month. Detainees were generally held for no longer than 24 hours, though from time to time the detention could last near to the maximum legal limit. Very occasionally the number of detainees could be higher; not long before the CPT's visit, up to 68 persons were arrested in a police operation regarding illegal immigrants. Most of the detainees remained in custody only for a short period of time, the rest being detained at the disposal of the examining judge. In this connection, the CPT would underline that a cell measuring 5.5 to 6.5 m<sup>2</sup> is far from ideal for the detention of more than one person overnight.

36. To sum up, the detention facilities at the Outer Madrid Headquarters displayed a number of deficiencies (lighting, ventilation, lack of privacy in sanitary facilities, hygiene). Further, in view of the rather limited size of the cells and the absence of any outdoor exercise area, the detention facilities were far from ideal for holding someone for an extended period.

37. Conditions of detention at **La Salve Barracks in Bilbao** were not as good as at the time of the first periodic visit. In particular, the state of the mattresses and blankets left something to be desired and some of the cell walls were dirty. It is also regrettable that steps have still not been taken to provide a shower facility for detainees, bearing in mind in particular that on occasion persons are detained at the Barracks for periods in excess of 24 hours.

38. In the course of the first periodic visit, two distinct detention areas were visited in the **Civil Guard Headquarters in Madrid**: two cells belonging to the "Judicial Unit for the Madrid Region" and a suite of eight cells in the basement used to accommodate terrorist suspects.

During the second visit, the Judicial Unit's cells were found to be in a very clean and hygienic condition, a far cry from the situation observed in 1991. Further, the level of artificial lighting in the cells had been improved somewhat. Nevertheless, by virtue of their limited size (3+ m<sup>2</sup>), the cells remained fit only to be used for temporary holding purposes (i.e. detention for a maximum of a few hours); however, consultation of the custody register revealed that it was not uncommon for persons to be held in the cells overnight, and that on occasion even longer periods of detention occurred.

The CPT is pleased to note that at the end of the second periodic visit, its delegation was informed in writing by the Spanish authorities that instructions had been issued that the Unit's cells "should only be used for the minimum time strictly necessary, which in no event should exceed three hours".

The basement cells were in a much cleaner condition than that observed in 1991 (a label on the cell doors indicated that they had been disinfected on 24 March 1994); the CPT trusts that they will be maintained in this state. However, the delegation observed that three of the eight cells did not have any form of lighting. In this connection, it should be noted that two persons interviewed during the ad hoc visit in June 1994 alleged that they had been detained at the Headquarters in a dark cell. As already indicated (cf. paragraph 29), all cells should have adequate lighting. Further, as in the La Salve Barracks, a shower facility for detainees should be installed.

39. During the second periodic visit, a third detention area at the Civil Guard Headquarters in Madrid was shown to the CPT's delegation; it belonged to the "Grupo Fiscal", which dealt inter alia with drug and contraband matters.

This area consisted of four cells which were of an acceptable size for overnight stays (approximately 6 m<sup>2</sup>). However, the cells did not have access to natural light, and the artificial lighting was inadequate in two of them. They were equipped with mattresses and blankets, but the latter were in a rather dirty condition as were the cells in general. A ventilation system had been installed, but it was not in working order at the time of the visit. The sanitary facilities were in an acceptable state, but once again the absence of a shower facility is to be regretted.

**40. The CPT recommends that conditions of detention at the Outer Madrid Headquarters, the Headquarters in Madrid and the La Salve Barracks in Bilbao be reviewed in the light of the remarks set out in paragraphs 29 and 34 to 39 above.**

c. National Police establishments

41. Conditions within the cellular accommodation at the **Central Duty Inspection of the National Police in Madrid (Puerta del Sol)** were criticised in the report on the CPT's first periodic visit (cf. Part I, paragraph 40), and the suggestion was made that they be withdrawn from service. The CPT understood from remarks made in the Spanish authorities' interim report that this suggestion was to be followed, and in its letter of 15 March 1994 the Committee asked to be informed when the Puerta del Sol premises would cease to be used for holding persons in police custody. In the partial reply submitted by the Spanish authorities to the visiting delegation during the final talks on 22 April 1994, it was stated that "the police facilities in Puerta del Sol ceased to be used in October 1992, when they were transferred to a more suitable nearby building, the Zaragoza Barracks in Calle de Pontejos".

However, the delegation had already discovered some days earlier that the above-mentioned cellular accommodation was still very much in use. Certainly, the relevant police services had been located in an adjacent building, but they still exploited the previously visited cells, which were readily accessible via an underground passage.



42. The conditions of detention remained almost exactly as described in the report on the first periodic visit, save improvements to the lighting and ventilation in the corridor sections of the detention facility (improvements which had had little effect on the situation within the cells). The delegation was particularly concerned to find one person under investigation for a serious criminal offence being held overnight in a small (4 m<sup>2</sup>), poorly ventilated and poorly lit cell. Further, it was informed by a police officer on duty that cells in the officially disused sections of the Puerta del Sol basement area - where conditions of detention were even worse than those prevailing in the section currently in service - had occasionally accommodated detainees in the recent past.

43. In response to the immediate observation made by the visiting delegation (cf. paragraph 14, first sub-paragraph), by letter of 22 November 1994 the Spanish authorities forwarded to the CPT information provided on 16 November by the Director General of the Police. According to that information, the renovation of the Moratalaz Police Complex had almost been completed and the transfer of the Central Duty Inspection to those premises would be feasible very shortly. Moreover, it was stated that once that transfer had taken place, the cells in Puerta del Sol would be definitively withdrawn from service.

**The CPT wishes to receive within three months further information on progress made in this connection.**

44. Among the other National Police establishments visited, particular attention should be drawn to the conditions of detention at the Police Headquarters in Barcelona (Via Laietana) and at the Central District Police Station (Calle de la Luna) in Madrid.

The detention facilities at the **Barcelona Police Headquarters**, comprising some 15 cells, were in a filthy condition and in a poor state of repair. The cells did not have access to natural light, and the artificial lighting was very dim in many of the cells. As for ventilation, this was good in the corridor, but far less impressive in the cells. The persons in custody at the time of the visit had been provided with a mat and blankets; however, many of them were obliged to sleep on the floor of the cell, for want of raised sleeping blocks. It should be added that the size of several of the cells designated for individual occupancy (4 to 4.5 m<sup>2</sup>), rendered them scarcely appropriate for overnight stays.

The situation discovered at the **Central District Police Station at Calle de la Luna in Madrid** was even worse. The mats and blankets provided to detainees were in an extremely unhygienic state, and the cells were soiled with vomit and urine covered in sawdust. An offensive smell dominated the atmosphere, despite the powerful ventilation system. The sanitary facilities offered were in principle satisfactory (washbasin, shower, urinal, toilet with a door), but their state of hygiene also left something to be desired. Soap and means to dry oneself were not available. Further, the delegation heard complaints from detainees of long delays when requesting to go to the toilet; one detainee alleged that he had been seeking for several hours to use the sanitary facilities.

The delegation noted that on average some 20 persons were taken into custody at the station per day, and police officers stated that up to 15 detainees might remain overnight in the station's five cells (four measuring 6 to 7 m<sup>2</sup>, and the fifth 10 m<sup>2</sup>). In this connection, the CPT would underline that a cell of 6 to 7 m<sup>2</sup> should preferably accommodate not more than one person overnight, and never more than two, and that a cell of 10 m<sup>2</sup> should preferably accommodate not more than two persons overnight, and never more than three.

45. Conditions of detention in the **Area 1 District Police Station in Barcelona** were also unsatisfactory in certain respects. In particular, some of the cells had no form of lighting (whether natural or artificial) and several cells were in a rather dirty state; further, ventilation in the cells (as distinct from the corridor) was mediocre. Moreover, as in other National Police stations visited, no soap nor means of drying oneself were provided in the sanitary facilities, and complaints were heard that it could take a long time before a request to use a toilet facility was granted. Allegations were also heard that the cells had been seriously overcrowded shortly before the delegation's visit. In this connection, the CPT would underline that the station's smallest cells (which measured approximately 6 m<sup>2</sup>) are far from ideal for the detention of more than one person overnight, and that the larger cells (measuring just over 15 m<sup>2</sup>) should accommodate a maximum of five persons overnight.

Reference should also be made to the **Parla Police Station** in the province of Madrid, where the state of cleanliness of the mats and blankets provided to detainees and of the sanitary facilities left something to be desired.

46. Conditions of detention in the other National Police Stations visited (cf. paragraph 4) were of an acceptable level, and were very good in the **Minors Police Unit (Grume)** in Madrid.

47. **The CPT recommends that conditions of detention at the Police Headquarters and Area 1 District Police Station in Barcelona, and at the Central District Police Station (Calle de la Luna) and Parla Police Station in Madrid, be reviewed in the light of the remarks set out in paragraphs 29, 44 and 45.**

d. Basque Autonomous Police (Ertzaintza) establishments

48. The Ertzaintza ("people caring force") is the police force under the authority of the Basque Autonomous Government. It started operating in 1982 and since then has been deployed to cover most parts of the Basque territory and a large majority of its population. It is intended that full deployment will be completed in the near future. Some policing functions are carried out by the Ertzaintza exclusively, while others are performed by other law enforcement agencies or by two or more of them in co-operation.

49. The delegation visited three Ertzaintza stations. The conditions of detention were on the whole satisfactory (though the level of hygiene at the San Sebastián Station was not good at the time of the visit - apparently due to technical problems soon to be remedied).

50. However, despite their very recent construction, the stations displayed one significant defect, namely the cramped nature of their cellular accommodation. The individual cells at San Sebastián Ertzaintza Station measured just 5 to 5.5 m<sup>2</sup> and those at the other stations visited were even smaller - slightly over 4 m<sup>2</sup> at the Tolosa Station, falling to a mere 3.5 m<sup>2</sup> at the Sestao Station. As for the multi-occupancy holding cells, they ranged in size from 6 to 12 m<sup>2</sup>.

By virtue of their size, the individual cells at the Sestao Station are fit only to be used for temporary holding purposes (i.e. detention for a maximum of a few hours); they should not be used to accommodate persons kept in custody overnight. Further, the individual cells at the Tolosa Station border on the unacceptable for overnight stays.

51. **The CPT recommends that the remarks in paragraph 50 be taken into account when persons are detained at the Sestao and Tolosa stations, as well as in the operation of existing Ertzaintza establishments in general<sup>2</sup> and in the construction of new ones. In this connection, the CPT would suggest the following as a desirable objective, insofar as space is concerned, for individual cells used for overnight stays: in the order of 7 m<sup>2</sup>, 2 m or more between walls, 2.5 m between floor and ceiling<sup>3</sup>.**

52. It should also be noted that the design of the sanitary facilities in all of the stations visited did not allow detained persons to comply with the needs of nature in private. Security considerations may exceptionally rule out the possibility of allowing such privacy; however, lack of privacy should not be the general rule.

**The CPT recommends that appropriate steps be taken to remedy this shortcoming.**

e. other places of detention

53. The **Municipal Police Headquarters in Bilbao** were revisited, and the CPT's delegation noted that no account had been taken of the observations concerning the Headquarters' cellular accommodation made in the report on the 1991 visit (cf. Part I, paragraph 36). In particular, none of the individual cells had been enlarged and detained persons held overnight were still not provided with a mattress.

**The CPT recommends that the above matters be addressed without further delay.**

**More generally, the CPT would like to receive information on regulations or guidelines issued to municipal authorities concerning cellular accommodation and the facilities to be offered to persons detained.**

54. Regarding the cells at the **Audiencia Nacional**, the CPT **wishes to reiterate the suggestion made in the report on the first visit (cf. Part I, paragraph 86), that all the cells be equipped with a means of rest for persons detained.**

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<sup>2</sup> From the 1991 report of the Ararteko (Ombudsman) on the cells in Ertzaintza establishments, the CPT learnt that individual cells of a size comparable to those seen in the stations visited also existed in other Ertzaintza stations.

<sup>3</sup> Following the visit, the CPT received a copy of standards, dated 5 May 1993, laid down for the construction of new cellular accommodation for use by the Ertzaintza, which in broad lines comply with the CPT's suggestions as to cell dimensions.

55. Conditions of detention at the **Joint Municipal and National Police Station in Las Ramblas at Barcelona** were adequate for short term stays, and the stations's custody register indicated that persons taken into custody were not held at the station for more than a few hours. The only exception concerned inebriates, who might be kept in the station overnight. **The CPT considers that it would be desirable to provide intoxicated persons taken into custody with a mattress (which could be disposable or equipped with a washable covering).**

f. supplementary remarks

56. A number of detained persons with whom the delegation spoke complained that they had been given insufficient food while in the custody of the law enforcement agencies.

From the delegation's observations in situ, the situation in this regard seemed to vary considerably from place to place. In some establishments, it appeared that detained persons were fed correctly. For example, at the Central Duty Inspection (Puerta del Sol) in Madrid, detainees received micro-wave heated prepared meals; at the Minors Police Unit meals were provided by a local restaurant; and at the Outer Madrid Civil Guard Headquarters, the delegation was told that detained persons would receive the same food as that provided to Civil Guard officers (in the absence of any detained persons, the veracity of this statement could not be confirmed). However, in other places, the situation was clearly less favourable; for example, at the Central District National Police Station, Calle de la Luna, in Madrid, detained persons received only milk and dried biscuits, even in the event of their being held overnight at the station.

**The CPT recommends that the Spanish authorities review existing arrangements for providing food to persons detained by the law enforcement agencies, in order to ensure that such persons receive food at appropriate times, including at least one full meal every day.**

57. Finally, **the CPT wishes to reiterate the recommendation that the Spanish authorities take appropriate steps to ensure that the conditions of detention in the establishments of law enforcement agencies in general meet all the requirements indicated in paragraph 29.**

### **3. Safeguards against the ill-treatment of detained persons**

58. The CPT attaches particular importance to three rights for persons detained by the law enforcement agencies:

- the right of those concerned to have the fact of their detention notified to a close relative or third party of their choice,
- the right of access to a lawyer,
- the right to a medical examination by a doctor of their choice (in addition to any medical examination carried out by a doctor called by the law enforcement authorities).

The CPT considers that these three rights are fundamental safeguards against the ill-treatment of persons in detention, which should apply from the very outset of custody (i.e. from the moment when those concerned are obliged to remain with law enforcement officials).

Furthermore, in the view of the CPT, persons taken into custody should be expressly informed without delay of all their rights, including those referred to above.

59. In the report drawn up following the first periodic visit in 1991, the CPT examined in some detail the extent to which the above-mentioned rights are guaranteed in Spain and made a number of recommendations on this subject (cf. Part I, paragraphs 45 to 57). However, to the knowledge of the CPT, the legal position relating to these matters has not evolved since 1991.

#### **a. notification of custody**

60. A detained person held *incommunicado* is, for so long as he remains *incommunicado*, denied the right provided for in Article 520(2)(d) of the Code of Criminal Procedure (i.e. the right to have the fact of his detention and the place in which he is being held at any given time made known to a relative or other person of his choice). Under the existing legal provisions, the above-mentioned right could be denied for up to five days (and, apparently, in exceptional cases even longer), and in the report on the first periodic visit, the CPT recommended that this period be shortened substantially (cf. Part I, paragraph 47). The CPT would recall the comments made on this subject in its letter of 15 March 1994 to the Spanish authorities:

"As regards in particular a detained person's right to notify the fact and place of his detention to someone of his choice, the CPT fully recognises that the denial of that right for a brief period may exceptionally be necessary in order to protect the interests of justice. However, in the Committee's view, to deny for up to five days the right to have the mere fact of one's custody notified to a third party (i.e. to hold a person in secret for such a period insofar as his family and friends are concerned) is not justifiable. Of course, the fact that someone has been arrested will often be widely known almost immediately, as a result of the circumstances of the arrest and/or subsequent media reports. However, this will not always be the case."

Consequently, **the CPT must reiterate its recommendation that the period during which a detained person can be denied the communication provided for in Article 520(2)(d) of the Code of Criminal Procedure be shortened substantially; in the Committee's opinion, a period up to a maximum of 48 hours would strike a better balance between the requirements of investigations and the interests of detained persons.**

61. In addition to its consequences as regards the exercise of the right under Article 520(2)(d), the imposition of an incommunicado regime has other important implications for the person detained; he will have contact practically exclusively with law enforcement officials for up to five days and, in particular, will be denied access to a lawyer of his own choice.

The CPT fully recognises that in order to protect the interests of justice, it may be necessary in certain cases to place restrictions upon a detained person's contacts with the outside world. However, as indicated in the CPT's letter to the Spanish authorities of 15 March 1994 (paragraph 9), the imposition of such restrictions should not become a matter of routine and, when applied, the restrictions should be lifted at the earliest opportunity.

62. From the information supplied by the Spanish authorities, it would appear that the law enforcement agencies systematically request that persons arrested in relation to terrorist activities be held incommunicado and that the competent judges systematically grant such requests<sup>4</sup>. Further, from the information gathered during the visit, it transpired that the reasons given by the judge for ordering incommunicado detention tend to be brief and of a stereotyped nature, and that the decision is granted for the maximum period of detention (i.e. the period of incommunicado detention is linked to the period of custody).

**The CPT would like to receive the comments of the Spanish authorities on the above remarks.**

**Further, bearing in mind that a person should not be held incommunicado any longer than is absolutely necessary (cf. Article 506 of the Code of Criminal Procedure), the Committee would like to receive the views of the Spanish authorities on the possibility of requiring that a decision ordering that a person be held incommunicado be reviewed at a specified moment (for example, when a request that the detainee's period of detention be extended is examined - cf. Article 520 bis, paragraph 1)<sup>5</sup>.**

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<sup>4</sup> According to the information provided, during 1993 the law enforcement agencies arrested 127 persons in relation to terrorist activities. Seven were arrested on the basis of a judicial warrant and hence the provisions of Article 520 bis of the Code of Criminal Procedure were not applicable. The law enforcement agencies requested that all of the other 120 persons be held incommunicado, and the competent judge granted that request in 114 of the cases; as regards the remaining six persons, they were released before the judge took a decision. In no case was a request for incommunicado detention denied by the judge.

<sup>5</sup> See also paragraph 74.

b. access to a lawyer

63. The CPT's views on the present position in Spain concerning access to a lawyer have already been spelt out in the report on the first periodic visit (Part I, paragraphs 49 to 52) and the Committee's letter of 15 March 1994 (paragraph 10). The CPT would add that it is crystal clear from the information gathered during both the second periodic visit in April 1994 and the ad hoc visit in June 1994 that detained persons are not infrequently interrogated by law enforcement officials prior to their making a statement in the presence of a lawyer. Further, most of the acts of ill-treatment alleged are said to have occurred during such periods of interrogation.

**64. The CPT calls upon the Spanish authorities to comply with its previously-made recommendation that persons detained by the law enforcement agencies be granted the right of access to a lawyer as from the outset of their detention, it being understood that in the case of a detainee held incommunicado, that lawyer may be officially appointed on his behalf.**

**This right of access to a lawyer should include inter alia the right to contact and to be visited by the lawyer, in both cases under conditions guaranteeing the confidentiality of the detainee/lawyer discussions.**

c. access to a doctor

65. The delegation found that the situation regarding access to a doctor remained very much as described in the report on the first periodic visit (cf. Part I, paragraph 55). On the whole it appeared that detainees in real need of medical attention would receive it in one way or another. However, as in 1991, the delegation noted in some police stations that the medical reports drawn up following the examination of detained persons tended to be superficial. Moreover, it appeared that medical examinations were not always conducted out of sight or even out of hearing of law enforcement officials. In this connection, **the Committee would recall the recommendations made in paragraph 57 (fourth and fifth indents) of the report on the first periodic visit.**

66. In the report on the first periodic visit, the CPT called for a closer involvement of forensic doctors in the medical examination of categories of detainees who might be considered to be at particular risk of ill-treatment, or who frequently allege such treatment.

The role of forensic doctors was considered in some depth in the report on the CPT's ad hoc visit to Spain in June 1994, and the Committee would recall the recommendations made on this subject in paragraphs 37 and 39 of that report.

**The CPT also wishes to stress that although forensic doctors are employed by the State to carry out certain specific duties, as doctors they retain a basic duty of emergency care and advice to the persons they examine. Forensic doctors should be provided with all the means necessary to perform effectively this hybrid function.**

67. As regards the right of detained persons to be examined by a doctor of their own choice, the CPT notes that such a right does exist in principle for persons who are not held incommunicado (cf. Article 523 of the Code of Criminal Procedure). **The CPT recommends that detainees be expressly informed of this right.**

68. As for detainees held incommunicado, the CPT has noted with interest the comment made to the delegation which carried out the ad hoc visit in June by the judge in charge of Central Examining Court No. 5, namely that he would accede to a request made by a detainee held incommunicado to be examined by his own doctor, provided that the forensic doctor was also present at the examination.

In its report on the first periodic visit, the CPT recommended that a detainee held incommunicado should, if he so wished, be entitled to be examined by a doctor chosen from a list of doctors drawn up in agreement with the appropriate professional body (cf. Part I, paragraph 57, second indent). However, the approach indicated by the central examining judge is equally acceptable.

Whichever of the two approaches is adopted, **the CPT recommends that detainees held incommunicado be expressly informed of the possibility open to them to be examined by a second doctor.**

d. conduct of interrogations

69. In its report on the first periodic visit, the CPT recommended the Spanish authorities to draw up and publish a code of practice for the conduct of interrogations by law enforcement officials (cf. Part I, paragraph 59). The existence of such a code would inter alia help to underline the lessons taught during the training of law enforcement officials. However, to date this recommendation has not been complied with.

The information gathered during the second periodic visit and the ad hoc visit in June 1994 has underlined the need for a code of practice. In addition to the considerable number of allegations received of ill-treatment during interrogations, the information at the CPT's disposal indicates that on occasion detained persons (and more particularly terrorist suspects) are interrogated for lengthy periods and their formal statements taken during the night.

70. Consequently, **the CPT must reiterate its recommendation that a code of practice for the conduct of interrogations by law enforcement officials be drawn up.**

**In addition to stressing the total prohibition of the use of ill-treatment, the code should deal inter alia with the following: the systematic informing of the detainee of the identity (name and/or number) of those present at the interrogation; the permissible length of an interrogation; rest periods between interrogations and breaks during an interrogation; places in which interrogations may take place; whether the detainee may be required to remain standing while being interrogated; the interrogation of persons who are under the influence of drugs, alcohol, medicine, or who are in a state of shock. It should also be required that a record be systematically kept of the time at which interrogations start and end, of the persons present during each interrogation and of any request made by the detainee during the interrogation.**

**The position of specially vulnerable persons (for example, the young, those who are mentally disabled or mentally ill) should be the subject of specific safeguards.**



71. Further, **the CPT requests the Spanish authorities to reconsider its recommendation concerning the possible introduction of a system of electronic recording of interrogations by law enforcement officials (cf. also paragraph 14 of the CPT's letter of 15 March 1994).**

Such a system would not only represent an important safeguard for detainees, but would also serve the legitimate interests of the law enforcement agencies. In particular, it would provide a complete and authentic record of the interrogation process, thereby greatly facilitating the investigation of allegations of ill-treatment and the correct attribution of blame.

- e. supervision of the situation of detained persons by the competent judicial authority or public prosecutor

72. The CPT considers that regular and unannounced visits by the competent judicial authority or public prosecutor to places where persons are detained by the law enforcement agencies could make a significant contribution to the prevention of ill-treatment. However, from the information gathered during the second periodic visit, it would seem clear that such visits rarely occur.

**The CPT requests that judicial authorities and/or public prosecutors be encouraged to exercise such on the spot supervision of places of detention.**

73. As regards, more particularly, persons to whom Article 520 bis of the Code of Criminal Procedure applies, paragraph 3 of that Article stipulates that "during detention, the judge may at all times request information on and ascertain the detainee's situation personally or by delegating responsibility to the examining judge of the district in which the detainee is being held".

However, the information gathered during both the second periodic visit and the ad hoc visit in June 1994 confirmed the impression gained during the first periodic visit (cf. Part I, paragraph 60), that the possibilities offered by the above-cited provision are not being fully exploited. It would appear that judges rarely visit such persons during their period of detention by the law enforcement agencies or order that they be brought before them, even when allegations of ill-treatment are brought to their attention (e.g. by the forensic doctor).

**The CPT requests that the relevant judicial authorities be encouraged to have more frequent recourse to paragraph 3 of Article 520 bis.**

74. In this context, the CPT also wishes to emphasise that in the interests of the prevention of ill-treatment, it would be highly desirable for detained persons to be systematically brought before the judge concerned<sup>6</sup>, prior to him taking a decision under Article 520 bis, paragraph 1, on the issue of extending the detention period beyond 72 hours. However, this is not the current practice, although such an approach would appear to be quite possible under Spanish law.

**The CPT would like to receive the comments of the Spanish authorities on this matter.**

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<sup>6</sup> Or, if the person is detained outside Madrid at the relevant time, before an examining judge of the district in which he is being held.

75. Finally, it is self-evident that for judicial authorities and public prosecutors to be in a position to supervise effectively the situation of detained persons, they must be informed in good time of arrests effected by the law enforcement agencies.

The CPT's delegation was informed by some law enforcement officials that 72 hours might elapse before any notification was given of an arrest to the competent judicial authorities/public prosecutor, whereas others stated that there was a legal requirement to provide such notification within 24 hours of the arrest.

**The CPT would like to have this question clarified.**

f. custody records

76. During the course of its visit, the CPT's delegation found that the recommendation contained in paragraph 65 of the 1991 report (that the possibility of developing a single and comprehensive custody record be explored) had not been acted upon.

Deficiencies in this respect were particularly serious at the Guipúzcoa Civil Guard Headquarters in the Basque country. The delegation was told that no records whatsoever were kept at the Headquarters' place of detention, situated at El Antiguo; all custody information was kept by the investigating group or branch of the Civil Guard in different premises at Intxaurreondo. This made it materially impossible to maintain accurate custody records.

By contrast, the delegation was impressed by the records kept by the Ertzaintza. In substance, they complied with the CPT's recommendation.

**The CPT wishes to reiterate its recommendation that the Spanish authorities develop a single and comprehensive record to be used by law enforcement agencies.**

77. The delegation was concerned to hear that at the Guipúzcoa Civil Guard Headquarters, some of the custodial duties were carried out by members of the investigating or operational group.

The CPT considers that the existence of a "custody officer" (as distinct from an officer merely posted to the detention area), accountable for the well-being of detainees during the period of time spent under his custody, can greatly enhance the protection of detainees against ill-treatment. This would be particularly the case if custody officers were to be specifically selected and trained for the job, in view of the special requirements involved. **It therefore invites the Spanish authorities to explore the possibility of attributing the responsibility for the custody of detainees to custody officers who are specifically selected and trained for that post.**

g. Organic Law No. 1/1992 on the protection of people's security

78. This statute provides inter alia that law enforcement officials may demand identification from a person, provided such identification is necessary for the performance of their duties of investigation and prevention of crime. When required in pursuance of these duties, law enforcement officials may request that persons accompany them to police/Civil Guard premises for the purposes of identification; however, their stay in such premises must be for the shortest possible time.

79. The CPT's delegation noted that persons could on occasion be detained for several hours on the basis of the above-mentioned law. **The CPT would like to be informed of the rights enjoyed by persons who are detained for the purposes of identification.**

## **B. Places of detention for foreigners**

80. In the course of the second periodic visit, the CPT's delegation revisited the Detention Centre for foreigners at Moratalaz (Madrid) and the Special Transit Area at Barajas Airport. Further, the Detention Centre for foreigners in Barcelona was visited for the first time.

### **1. Detention Centre for foreigners at Moratalaz**

81. In the report on the first periodic visit, the CPT made a number of recommendations concerning conditions of detention at the Moratalaz Centre; in particular, it recommended that access to the Centre's patio be improved, that activities for detainees be developed, and that information for detainees be made available in appropriate foreign languages.

However, in the course of the second periodic visit, the CPT's delegation found that the position remained much the same as that observed in 1991. Access to the patio was still not guaranteed on a daily basis, no recreational activities (apart from watching television) were offered, and relevant information was not provided in foreign languages.

It should be added that the Centre's Director stated that he had never been informed of the remarks made by the CPT in its report on the first periodic visit concerning the above-mentioned and other matters (cf. also paragraph 11 above).

**82. The CPT recommends that the operation of the Moratalaz Centre be reviewed without further delay, in the light of the recommendations and comments made in paragraphs 68 to 78 of the report on the first periodic visit.**

### **2. Detention Centre for foreigners at Barcelona**

83. The Detention Centre was located in basement-level premises, adjacent to the cellular accommodation of the Area 1 District Police Station (cf. paragraph 45). The Centre had an official capacity of 120 (80 men and 40 women, accommodated in two distinct sections), and was operating within that capacity at the time of the visit.

84. Relations between the detainees and the police officers responsible for supervisory duties were clearly very limited in scope, and the delegation detected an underlying state of tension - apparently due, to a large degree, to language barriers. Further, a few allegations were heard that detainees had on occasion been struck with a truncheon, in particular when police officers had intervened to deal with a fight.

In this connection, **the CPT would recall the recommendations and comments made in the report on the first periodic visit concerning the selection of police officers for supervisory duties in detention centres, and the carrying of - and recourse to - truncheons (cf. Part I, paragraphs 70 and 71).**

85. Material conditions of detention in the Centre were on the whole acceptable, with the notable exception of access to the open air (cf. paragraph 86). Sleeping quarters consisted of cells measuring approximately 12 and 16 m<sup>2</sup>. The former accommodated four persons, and the latter, eight. Although detainees spent a considerable part of the day (thirteen to fourteen hours) out of the cells, conditions in the 16 m<sup>2</sup> cells must be very cramped whenever they are full. **The CPT recommends that not more than six detainees be held in those cells.**

The cells were adequately equipped and in a reasonable state of cleanliness and repair. However, certain of the cells had very limited access to natural light; at the time of the visit these latter cells were not used for detention purposes, and **it would be preferable that this remain the case.**

The toilet and shower facilities located alongside the cells were quite adequate, and there appeared to be reasonable access to them (though some male detainees alleged that a very limited time was allowed for taking a shower).

86. During the day, detainees had access to a good-sized television room equipped with chairs.

They could also walk in a so-called "patio"; however, this facility (consisting of a large room with skylights) did not offer access to the open air. **The CPT recommends that steps be taken immediately to ensure that persons held at the Centre are allowed access to an open air exercise area for at least one hour per day.**

Eating took place in a good-sized and suitably equipped dining room; on the other hand, it was clear that the fare on offer was not to the liking of many detainees (in particular those of chinese origin).

87. As at the Moratalaz Centre, no recreational activities (apart from watching television) were offered to detainees and no relevant information was provided to them in foreign languages (and apparently no written information in any language). **The CPT recommends that these shortcomings be remedied.**

88. The detainees were allowed contact with the outside world. Two telephones were at their disposal (provided they had money to use them) and visits were allowed on a daily basis from friends, lawyers and representatives of non-governmental organisations (though the delegation observed that the visiting room was a rather spartan facility - a bare room containing merely two chairs).

89. Given the absence of the competent medical staff at the time of the visit, the delegation was not in a position to assess the adequacy of the health-care service provided for persons detained in the Centre.

**The CPT would like to receive information on this matter.**

### 3. Special Transit Area, Barajas Airport, Madrid

90. The delegation noted a considerable improvement in the facilities used to hold foreigners refused entry to Spain or who were in the process of being expelled from the country, as compared to those observed during the 1991 visit.

The Special Transit Area consisted of three dormitories (one of them reserved for women), each measuring between 20 and 25 m<sup>2</sup>, a sitting room and a dining room. Further, there were distinct sanitary facilities (including showers) for men and women. The dormitories contained between six and eight beds, each equipped with a mattress. In addition, three baby cots were available. Blankets were provided (but no sheets or pillows).

The sitting room and the dining room were adequately furnished for their purpose. The dining room contained, in addition to tables and chairs, a soft drinks and beer machine, coffee and cigarette machines and two pay-phones.

The premises did not benefit from any natural light, but were equipped with good artificial lighting. Some complaints about the malfunctioning of the ventilation system were heard, including from supervisory staff.

91. Persons held at the Special Transit Area were provided with food at normal times, supplied by air carriers in the usual on-board presentation. Further, reasonable access to luggage was allowed; at the time of the visit, one of the six persons held there had her luggage with her, and others had recently collected certain items from their luggage.

There were no facilities for open air exercise. However, the delegation was informed in writing by the Spanish authorities at the end of the visit that new premises would be brought into service by the end of 1994, which would allow open air exercise and improved conditions of detention generally.

92. The CPT welcomes the above-mentioned improvements; the Special Transit Area can now be considered as offering acceptable conditions for short periods of detention (i.e. up to a few days), on condition that an open air exercise facility is provided shortly. However, the Area remains inadequately equipped for longer stays (which the custody register indicated occasionally occurred).

**The CPT wishes to receive in due course further information on improvements made to the transit holding facilities. In this connection, the Committee would stress that in addition to an open air exercise facility, it would be very desirable for the holding facilities to enjoy access to natural light.**

#### 4. Supplementary remarks

93. The CPT would underline once again that the establishment of specific centres for the accommodation of persons detained under aliens legislation is a very positive development, provided they are properly equipped. To hold such a person in a prison would be quite inappropriate (a position fully recognised in Spain; cf. Article 26(2) of the Aliens Law), and conditions in police stations will frequently if not invariably be inadequate for the detention of someone for a period that might last up to 40 days.

94. In this connection, the CPT expressed concern in the report on the first periodic visit about the holding of persons detained under the Aliens Law at Algeciras Police Station. The Spanish authorities subsequently informed the Committee that the opening of a Detention Centre for foreigners at Tarifa had relieved the situation. However, according to the information provided by those authorities at the end of the second periodic visit, that Centre has now been closed.

**The CPT would like to receive full information on the alternative arrangements made for the accommodation of persons detained under the Aliens Law following the closure of the Tarifa Centre.**

95. Finally, **the CPT would like to receive information on both the formal safeguards and practical arrangements which are applied in Spain in order to ensure that aliens are not sent to a country where they run a risk of being subjected to torture or to inhuman or degrading treatment or punishment.**

## C. Prisons

### 1. Introduction

96. The CPT's delegation visited Barcelona Prison for Men (known as the "Modelo"), the Penitentiary Unit of the Terrassa Hospital (Barcelona), and the Carabanchel Prison Complex; the last-named comprises Madrid I Prison, Madrid Prison for Women and the General Penitentiary Hospital. The Modelo Prison and the Penitentiary Unit of the Terrassa Hospital fall under the authority of the Department of Justice of the Catalan Government, and the Carabanchel Prison Complex under that of the Ministry of Justice and the Interior of the national Government.

A number of detained persons were interviewed, and specific matters examined, at Logroño Prison, Madrid II Prison (Alcalá-Meco) and Madrid III Prison (Valdemoro); however, the conditions of detention in these establishments were not examined in detail.

Finally, the delegation visited a number of sick prisoners being cared for at Gregorio Marañón Hospital in Madrid.

97. The **Modelo Prison** is located in the central area of Barcelona. It was built in 1904 and has a radial design, with six wings. The prison has an official capacity<sup>7</sup> of 1,100; on the first day of the delegation's visit, it was accommodating 2,056 inmates, evenly divided between remand and convicted prisoners.

98. The Carabanchel Prison Complex is located on the outskirts of Madrid.

**Madrid I Prison**, one of the four prisons for men in the Madrid province, started operating in 1944. It has a radial design, with eight wings. The prison has an official capacity of 1,285 and a so-called "operating" capacity of 2,134, plus 203 auxiliary places. At the time of the delegation's visit, it was accommodating 2,184 inmates, approximately 60% of whom were on remand.

The **Madrid Prison for Women** was built in 1979 as a young offenders place of detention and was converted to its current use in 1990. It comprises four modules as well as a quite distinct mother/baby unit. The prison has an official capacity of 369 and an operating capacity of 626 plus 73 auxiliary places; at the time of the visit, 637 inmates and 50 offspring up to the age of six were being accommodated. There was an even mix of remand and convicted prisoners.

The **General Penitentiary Hospital** was built in 1971. It provides ambulatory medical services for the prison population of the Madrid province and its surroundings and holds casualties and general medicine patients; prisoners from other parts of Spain can also be taken there for specialist treatment, in particular psychiatric patients treated in the dedicated unit at the hospital. Women patients can also be treated at the General Penitentiary Hospital. The Committee was informed that the hospital had an operating capacity of 153; at the time of the visit it was caring for 139 patients, including 10 women.

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<sup>7</sup> All capacity figures given were provided by the Spanish authorities.



99. Ministry of Justice officials told the delegation that it had been intended to close the Carabanchel Prison Complex in 1995, once the prisons at Navalcarnero, Valdemoro, and Soto del Real had become fully operative (the first two are already functioning). However, due to uncertainties about prison population trends, it had been decided to postpone closure for at least two years. As already indicated (cf. paragraph 15), the General Penitentiary Hospital was scheduled to close on 15 October 1994.

## **2. Torture and other forms of ill-treatment**

100. During the course of its visit to the Carabanchel Prison Complex, the delegation heard no allegations of ill-treatment of prisoners by prison officers working in the different establishments at Carabanchel.

More generally, relations between staff and inmates in those establishments appeared to be reasonably positive. The delegation formed a favourable impression of the staff in the Carabanchel Prison Complex and was particularly struck by the high quality of the younger staff members, some of whom had already assumed senior posts.

101. Further, the delegation heard practically no allegations of recent acts of ill-treatment by prison officers working in the Modelo Prison, though it appeared that on occasion prisoners might be somewhat roughly treated in the 5th Gallery (which contains the disciplinary and admissions departments). The Prison Director informed the delegation that a prison officer working in that Gallery had recently been suspended for having slapped a prisoner; he accepted that the situation in the Gallery required particularly close supervision.

102. The delegation received information from a number of sources about an incident which had occurred in the 4th Gallery of the Modelo Prison in May 1990, in the course of which many prisoners were said to have been severely beaten. The Catalan authorities themselves acknowledged that a number of prison officers had acted in an "inappropriate" manner on that occasion. Both criminal and administrative proceedings had been brought against the staff involved.

It would appear that no similar incidents had subsequently occurred, and both prisoners and staff members commented that there had been a marked improvement in staff/prisoner relations at the establishment since 1990. The delegation itself noted that, overall, day to day dealings between staff and prisoners were relatively relaxed, despite often very poor material conditions of detention, which scarcely facilitated the maintenance of good relations.

103. The only prison establishment visited in which the delegation heard a certain number of allegations of recent acts of ill-treatment was Madrid II Prison. In particular, one prisoner alleged that he had remained attached (by means of handcuffs) throughout the night to a metal ring located under his cell table and had been beaten with a truncheon. The delegation noted that the prisoner in question had lodged a complaint about this with the supervisory judge.

Another prisoner interviewed alleged that he had been beaten in his cell by prison officers using truncheons, and a third prisoner alleged that incapacitating gas had been sprayed inside his cell, following which he had been struck by prison officers.

The above-mentioned prisoners were all held in the isolation units of the prison.

104. A number of remarks were made in the report on the first periodic visit on the issue of ill-treatment in Madrid II Prison (cf. Part I, paragraphs 91 to 94) and the Committee expressed the general view that there had been a "positive evolution" as compared to the situation which had prevailed in the past. The CPT does not wish to go back on that view, the more so as its delegation spent only a short time at Madrid II Prison in the course of the second periodic visit. Nevertheless, in the light of the above-mentioned allegations, **the Committee would like to receive a full account of complaints of ill-treatment made by prisoners in Madrid II Prison over the last two years and of action taken upon them.**

As regards more particularly the metal rings inserted in the concrete blocks which form the base of cell beds and tables at Madrid II Prison, it was recommended in the report on the first periodic visit that they be removed. The CPT's delegation which carried out the second periodic visit observed that in most of the cells it went to, the rings had been removed (apparently quite recently). However, some of the rings remained; **the CPT recommends that they be removed without further delay.**

105. In the report on the first periodic visit, the CPT also recommended that the so-called "sprays having an adequate effect" be removed from the list of means of coercion that may be resorted to by prison officers, in particular as they lend themselves to abusive use (cf. Part I, paragraph 107).

The CPT's delegation was informed during the second periodic visit that the use of such sprays had been banned on a provisional basis on 7 April 1994. **The CPT trusts that the sprays will be definitively removed from the list of authorised means of coercion. The CPT also recommends that the use of such sprays within all places of detention, whatever their nature, be prohibited.**

106. As regards means of coercion in general, it was recommended in the report on the first periodic visit that a central register be kept in each prison, containing full information on every instance of resort to such means (cf. Part I, paragraph 106).

It was clear from the information gathered during the second periodic visit that this recommendation had not yet been implemented (though staff at Madrid II Prison had themselves taken the initiative of establishing such a register). Consequently, **the CPT wishes to reiterate the above-mentioned recommendation.**

107. Finally, to enable the CPT to obtain a nationwide view of the situation, **it would like to receive information on the number of complaints of ill-treatment lodged in 1993 and 1994 against prison officers in Spain and on the number of disciplinary and/or criminal proceedings initiated during the same period in relation to allegations of ill-treatment by prison officers, together with an account of any sanctions imposed.**

### 3. Treatment of prisoners considered as "extremely dangerous" or as "unadapted to an ordinary prison regime"

108. In the report on the first periodic visit, the CPT made a number of remarks concerning the situation of sentenced prisoners classified in Grade 1 and of remand prisoners to whom an analogous regime was applied on the basis of Article 10(2) of the General Organic Law on Prisons (cf. Part I, paragraphs 110 to 116)<sup>8</sup>.

The CPT recommended in particular that steps be taken to ensure that the material conditions of detention of a prisoner held in isolation as a result of his Grade 1/Article 10(2) status are clearly better than those of a prisoner undergoing solitary confinement as a punishment, and that the regime applied to Grade 1/Article 10(2) prisoners be reviewed with the aim of developing purposeful activities.

109. In August 1991 the number of phases within Grade 1/Article 10(2) were reduced from three to two. During the second periodic visit, the CPT's delegation observed that phase 2 had taken over from the former phase 3 the role of a stepping stone towards an ordinary regime. However, the situation of the Grade 1/Article 10(2) prisoners placed in phase 1 seen by the delegation remains a matter of concern. As was the case during the first periodic visit, there was a penury of activities for such prisoners. Out-of-cell activities consisted merely of 2 hours exercise per day; as for in-cell activities, the prisoners had a small amount of reading material (two books and two magazines at any one time) at their disposal and, on occasion, a radio or television; there was no organised programme of activities. The CPT's delegation also observed that a prisoner suffering from an advanced, life threatening HIV-related disease continued to be subjected to this harsh regime while in the General Penitentiary Hospital. Further, it was observed once again that the material conditions of detention of at least some of the Grade 1/Article 10(2) prisoners in phase 1 were comparable to those of prisoners placed in solitary confinement as a punishment. It should be added that a number of the prisoners concerned had been subjected to this regime for many months, and a few for more than a year.

As stated in the report on the first periodic visit (cf. Part I, paragraph 113), **a combination of long periods of isolation, austere material conditions of detention and absence of activities amounts, in the CPT's view, to inhuman treatment.**

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<sup>8</sup> Article 10(3) of the General Organic Law on Prisons provides for a restrictive regime -characterised by a limitation of group activities and a higher degree of control - to be applied to inmates falling within the categories defined in Article 10(1) - sentenced prisoners classified according to the Prison Rules in Grade 1 - and Article 10(2). In the following paragraphs, both these categories of prisoners shall be jointly referred to as Grade 1/Article 10(2) prisoners.

110. Reference should also be made in this context to the "register of inmates of special supervision", the so-called "FIES" system. This system was introduced by circular in 1989 in respect of prisoners convicted or suspected of terrorist-related offences, or of belonging to armed groups in general; it provided for the systematic gathering of specific items of information concerning those prisoners and their processing at central level. The scope of the FIES system was subsequently expanded to include, in addition to the armed band (BA) category, the special regime prisoners (RE)<sup>9</sup>, drug traffickers (NA), members of law enforcement agencies (FS) and other inmates considered to represent special cases, particularly when requiring protection (CE).

Further circulars issued in 1991 and 1992 added new elements (e.g. hourly visual controls of cells at night, changes of cells on a weekly basis), it not always being entirely clear whether they represented a development of the FIES system or rather of the Grade 1/Article 10(2) regime. Particularly restrictive measures were introduced vis-à-vis FIES-RE prisoners by circulars in September and October 1991 and July 1992; the October 1991 circular was subsequently repealed, but the other two (providing for special measures to be taken when FIES-RE prisoners are transferred - e.g. body searches by means of X-ray machines) remain in force.

111. Following the receipt of a number of complaints, the Ombudsman carried out an investigation, in the course of which all FIES-RE prisoners who were classified in Grade 1/Article 10(2) were visited. As a result of this investigation, as well as of certain rulings issued by supervisory judges, some of the excessively restrictive situations arising out of the combined applications of the FIES-RE system and a Grade 1/Article 10(2) regime were apparently corrected.

Nevertheless, it should be emphasised that to subject a prisoner to security measures over and above the restrictions flowing from his classification in Grade 1 /Article 10(2) can rapidly lead to situations falling within the scope of the term "inhuman treatment".

In this connection, **the CPT would like to receive the following information:**

- **the number of persons currently classified in each of the two phases of Grade 1/Article 10(2);**
- **regarding each of the above groups of persons, the distribution between the five FIES categories (BA, RE, NA, FS and CE) and the number of those not included in the FIES;**
- **regarding the Grade 1/Article 10(2) prisoners placed in the FIES-RE category, the length of time which each of those persons has been the subject of the combined application of the FIES-RE system and a Grade 1/Article 10(2) regime.**

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<sup>9</sup> i.e. prisoners who by reason of their prison history are considered as potentially very dangerous.

112. The delegation was informed by the Spanish authorities that the operation of the FIES-RE system was currently being reviewed and a "programme for the recuperation of conflictive inmates" drafted. From the information provided, this process appears to involve also a reconsideration of the content of the regime applied to Grade 1/Article 10(2) prisoners.

**The CPT recommends that in the course of the review currently taking place, the recommendations made in paragraphs 113, 114 and 116 of the report on the first periodic visit be fully taken into account.**

**Further, the Committee wishes to receive in due course full details of the new measures adopted concerning the FIES system and Grade 1/Article 10(2) regime.**

#### **4. Conditions of detention in the prisons visited**

##### **a. material conditions and activities**

113. As already indicated (cf. paragraph 97), the **Modelo Prison in Barcelona** was severely overcrowded at the time of the delegation's visit.

The prison's cells measured approximately 10 m<sup>2</sup> and were equipped with a partitioned toilet and washbasin. They were a satisfactory unit of accommodation for one person and just about acceptable for two; however, they were clearly inadequate for more than two persons. Unfortunately, accommodation by more than two persons was the norm in most of the wings. Prisoners were held three to a cell in Gallery 6, four to a cell in Gallery 1, rising to five to a cell for many prisoners in Galleries 3 and 4. Such a level of overcrowding cannot fail to have extremely negative repercussions on material, hygienic and psychological conditions of detention: living space, ventilation, etc. The CPT is particularly concerned about the risk of transmission of pulmonary tuberculosis in such conditions.

Many of the cells were in a rather dirty and unhygienic condition (which is scarcely surprising in view of the level of overcrowding) and a considerable number were in a poor state of repair; the latter was particularly the case in Gallery 4.

114. The poor material conditions in the cells were mitigated by a reasonable amount of out of cell time (10 hours a day). According to figures provided by the Catalan authorities, some 250 prisoners had paid jobs in the workshops and 400 others worked in the area of general services. Further, apparently a considerable number of prisoners took part in educational and socio-cultural activities. However, from the delegation's observations it appeared that many prisoners spent most of their out-of-cell time strolling about the exercise areas or watching television in the adjacent recreation rooms.

Access to shower facilities was good, being offered on a daily basis.

115. Material conditions were somewhat better in Gallery 7, which accommodated prisoners over 65 years old. The inmates slept in a dormitory-type facility, with high partitions and curtains, and had free access during the day to a good-sized common room and a terrace. The premises were clean, bright and well-ventilated, and the overall atmosphere in this Gallery was distinctly relaxed. Nevertheless, there was an obvious shortage of space for personal belongings, and some complaints were heard that in winter the Gallery was cold and damp. It is also regrettable that the only means of access to the Gallery was via a steep staircase.

116. Perhaps the best material conditions were to be found in Gallery 5, which housed the disciplinary and admissions units. In particular, certain cells in the disciplinary unit had been renovated to a high standard.

On the other hand, the CPT's delegation was concerned to hear allegations from newly-arrived prisoners that they had been deprived of outside exercise for up to three days.

117. Finally, reference should be made to the unsatisfactory conditions in the establishment's kitchen: several of the drains were blocked, the kitchen floor was slippery, and the premises as a whole were in a poor state of cleanliness and repair. Commodities as basic as soap in the toilets for washing hands were absent.

118. Conditions of detention were somewhat better in **Madrid I Prison**, but still far from ideal.

The standard cell measured slightly less than 11 m<sup>2</sup>, including the partitioned toilet and wash basin. As in the Modelo Prison, such cells could be considered as offering adequate accommodation for two prisoners but not more. Some prisoners were held two to a cell, for example in the 3rd Gallery and in parts of the 5th and 7th Galleries. However, many other prisoners were held three to a cell and a considerable number, four to a cell, in particular in the 5th and 6th Galleries; in such cells, living space was very poor, ventilation inadequate and cleanliness and hygiene generally wanting.

119. The CPT is also very concerned by the situation of prisoners held in the "double" cells on the 1st floor of the 6th Gallery. These cells, which measured approximately 22 m<sup>2</sup> (including the sanitary annex), were holding up to 10 prisoners. The use of two bunk and two three-tier beds meant that there was just enough space for a table, a few chairs and a cupboard. The material conditions of detention of these prisoners were deplorable. By contrast, the situation in the double cells on the ground floor of the 6th Gallery was far better; they were each being used to accommodate five prisoners with work, and at this level of occupation offered adequate living space.

120. Many of the prison's cells were in a rather poor state of repair. However, the delegation observed that a considerable amount of work on renovating cells was taking place. Further, the Gallery shower facilities, to which prisoners had ready access, were for the most part in a good condition.

121. Prisoners were allowed out of their cells for up to eleven hours a day and had access to outside exercise areas of a fair size as well as recreation rooms equipped with television. As regards organised activities, the prison possessed a number of workshops in Gallery 4 (shoe making, printing, carpentry, ironwork, etc.) as well as educational and sports activities in Gallery 2. The facilities in Gallery 2 included teaching and hobby rooms, a gymnasium, a library and reading rooms, and a good-sized concert room (320 places); the Gallery also had a large outside yard marked for games.

Nevertheless, it was clear that the above-mentioned workshops and other facilities - which in principle were quite impressive - were not sufficient to cope with the demands of more than 2,000 prisoners. At the time of the delegation's visit, 1,153 prisoners (i.e. slightly more than 50%) took part in some form of organised activity.

122. Newly-arrived prisoners other than those transferred from another prison would be accommodated for 48 hours or more in the establishment's admissions unit; a certain number of prisoners in need of protection were also located in the unit.

Conditions in the admissions unit were adequate for short stays. The cells measured over 12 m<sup>2</sup>, to which should be added a separate sanitary annex. Prisoners were held four to a cell; two bunk beds were provided for this purpose, which were well-suited to the cells given the high ceilings. Other cell equipment included a table, chairs and cupboard space. The unit also had a good outdoor exercise facility.

123. Material conditions of detention were also quite satisfactory in the establishment's segregation unit. The cells were quite large (+12 m<sup>2</sup>), had good light and ventilation, and were suitably equipped (bed, table and chair, sanitary annex). However, certain prisoners undergoing solitary confinement as a punishment alleged that they were allowed only 20 minutes outdoor exercise per day.

124. Unlike the situation found at the Modelo Prison (cf. paragraph 117), conditions in the kitchen at Madrid I Prison were good.

125. Like the Modelo and Madrid I Prisons, the **Madrid Prison for Women** was seriously overcrowded at the time of the delegation's visit. Well over 600 inmates were being held in the establishment, which had an official capacity of 369 and an "optimal" capacity, according to the Director, of 250.

The cells in Modules 1, 2 and 3 measured 7 m<sup>2</sup>, and those in Module 4, 10 m<sup>2</sup>; they were all equipped with a sanitary annex. The 7 m<sup>2</sup> cells in Modules 1 to 3 were quite adequate for single occupancy (for which they had been designed) but represented cramped accommodation for two persons. Unfortunately, as a result of overcrowding, doubling up was the general rule.

The situation was arguably worse in the 10 m<sup>2</sup> cells in Module 4. They were being used to accommodate three prisoners; two slept in the bunk bed, the third on a plinth equipped with a mattress, which during the day was stored under the bed.

Despite the overcrowding, the delegation observed that the cells were on the whole reasonably clean and in a satisfactory state of repair.

126. As in the other establishments visited, the negative effects of overcrowding in the cells were mitigated by reasonable out-of-cell time (11 hours).

Particular emphasis was placed on organised activities. The Director informed the delegation that the objective was to ensure that all prisoners should have at least one such activity, and preferably two, so as to enable them to earn remission. The establishment possessed nine well-equipped workshops, the largest being dressmaking (60 prisoners). Unfortunately, at the time of the visit, two of the workshops (photography, social activities) were closed for economic reasons. A considerable number of prisoners were engaged in educational activities; in this connection, particular reference should be made to the establishment's large and well-equipped library.

The prison also possessed a good gymnasium and a reasonable pitch for outside sporting activities, which served in addition as the exercise area for Modules 1 and 2. It should be added, however, that the outside exercise area for Modules 3 and 4 was a rather unattractive facility.

127. Material conditions in the prison's isolation unit call for no comment. However, the situation in the admissions unit left a lot to be desired.

The latter unit consisted of three cells, measuring 22 m<sup>2</sup>, each equipped with five bunk beds. The cells represented very cramped accommodation for 10 persons and, in addition, were equipped meagrely (a toilet and washbasin, a table and a few chairs).

In principle, prisoners should not spend more than 24 hours in the admissions unit. However, the CPT was concerned to learn that a prisoner arriving on Friday might not leave the unit until the following Monday; in the Committee's view, the conditions in the unit were such that it was not an appropriate place in which to keep a newly-arrived prisoner for three days.

128. Conditions in the mother/baby unit were on the whole rather good.

The cells were of an adequate size for a mother and child and were equipped with a shower. However, due to overcrowding it was sometimes necessary for a mother and child to share their cell with a pregnant inmate; it should be stressed that the cells did not offer sufficient living space for such a level of occupation.

Related facilities (exercise area, playground, nursery, workshops) were of a good standard. Further, the unit was adequately staffed (including two nurses) and was visited on a daily basis by a paediatrician.

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129. To sum up, the conditions of detention in the Modelo and Madrid I Prisons were far from satisfactory. They were seriously (Madrid I) or even outrageously (Modelo) overcrowded. Further, the state of repair and cleanliness of the cells left a great deal to be desired, in particular at the Modelo Prison. In addition, there was much enforced idleness among the prisoners, as activity programmes could not match the demand; for many, out-of-cell activities consisted essentially of exercise and watching television.

The material conditions of detention of many prisoners held in Modelo Prison (in particular those located in Galleries 3 and 4) and of certain prisoners in Madrid I (in particular those accommodated in the double cells, on the first floor of the 6th Gallery) were such that they could fairly be described as inhuman and degrading.

130. The Madrid Prison for Women was also seriously overcrowded, which had resulted in cramped living conditions in the cells, in particular in Module 4 and the admissions unit. However, conditions of detention in this establishment were overall fairly reasonable; the premises were clean and in a good state of repair and considerable efforts had been made to ensure that all prisoners were offered activities.

131. The situation observed at the Modelo Prison calls for urgent measures; above all, the number of prisoners held in the establishment must be reduced. In this connection, the CPT feels bound to point out that the act of depriving someone of his liberty carries with it the responsibility for detaining him in conditions which are consistent with the inherent dignity of the human person. As far as many prisoners in the Modelo Prison are concerned, the Spanish authorities have failed to live up to that responsibility.

**The CPT recommends:**

- **that steps be taken immediately to ensure that no more than three prisoners are held per cell;**
- **that serious efforts be made to reduce as soon as possible the occupancy rate to two prisoners per cell<sup>10</sup>;**
- **that immediate steps be taken to improve the level of hygiene - and material conditions in general - in the establishment's kitchen;**
- **that a major renovation programme, involving every part of the establishment, be drawn up and implemented without delay.**

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<sup>10</sup> Without prejudice to the objective of complying in due course with the principle of single occupancy laid down in Article 19 of the General Organic Law on Prisons.

132. As regards Madrid I Prison, the CPT recommends:

- **that steps be taken immediately to ensure that no more than three prisoners are held per standard cell, and no more than seven per double cell;**
- **that serious efforts be made to reduce as soon as possible the occupancy rate of the standard cells to two prisoners per cell<sup>11</sup>, and that of the double cells to five prisoners per cell.**

133. As regards the question of out-of-cell activities in the Modelo and Madrid I Prisons, it should be stressed at the outset that this is inextricably linked with the problem of overcrowding; significant and lasting progress on the former is dependent upon eradicating the latter.

In view of the rapid turnover of inmates, the organisation of a satisfactory programme of activities in remand establishments such as the Modelo and Madrid I prisons is not a straightforward matter. Obviously, individualised programmes of the sort which might be expected in an establishment designed to accommodate sentenced prisoners are out of the question. Nevertheless, prisoners cannot simply be left idle for weeks, months or even longer.

**The CPT recommends that the activity programmes offered in the Modelo and Madrid I Prisons be reviewed; the objective should be to ensure that all prisoners are offered the possibility to spend a reasonable amount of time each day engaged in purposeful activities of a varied nature (group association activities, sport, work with vocational value, education etc.).**

The CPT would add that at Madrid I Prison at least, it appeared that the material infrastructure necessary for providing such a level of activity programmes already existed, on condition that the prison population is kept within the establishment's official capacity of 1,285.

134. Further, with reference to the remarks made in paragraphs 116 and 123, **the CPT wishes to underline that all prisoners without exception, including newly-arrived prisoners and prisoners undergoing cellular confinement as a punishment, should be allowed to take at least one hour of exercise in the open air every day.**

135. As regards the Madrid Prison for Women, the CPT recommends:

- **that serious efforts be made to reduce as soon as possible the occupancy rate in the cells in Modules 1 to 3 to one prisoner per cell (save for specific situations when it is not appropriate for a prisoner to be left alone), and in Module 4 to two prisoners per cell<sup>11</sup>;**
- **that conditions in the prison's admissions unit be reviewed in the light of the remarks made in paragraph 127;**
- **that steps be taken to ensure that mothers and their offspring are not obliged to share their cells with other inmates held in the mother/baby unit (cf. paragraph 128).**

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<sup>11</sup> Cf. also footnote 10.

136. The CPT would add that it noted with some surprise that children could, as a general rule, stay with their mothers in prison until they reached the age of six. The length of time during which a mother should be allowed to keep her child with her in prison is a somewhat controversial issue. However, many would argue that keeping a child in prison beyond the age of two to three years old can have negative effects for the child concerned.

The CPT's general attitude on this subject is that one should not set a fixed number of years; instead, the transfer of the child to the outside community should be decided on in each individual case in the light of pedo-psychiatric and medico-social opinions, the primary consideration being the respect of the child's best interests.

**The CPT would like to receive the views of the Spanish authorities on this subject.**

137. Finally, the CPT is, of course, fully aware that the problem of overcrowding extends beyond the three establishments visited by its delegation in April 1994.

Considerable emphasis was placed on this question in the report on the CPT's first periodic visit (cf. Part I, paragraphs 117 to 128) and the Committee was subsequently informed by the Spanish authorities that the creation of 2,851 additional prison places was expected in 1992, thereby leaving a deficit of 5,400 places.

**The CPT recommends that a very high priority continue to be given to measures to reduce overcrowding in the Spanish prison system. In this connection, the Committee would like to receive up-to-date figures on the number of prisoners as compared to the number of prison places.**

b. contact with the outside world

138. The booths used for ordinary visits from family members and friends at the Carabanchel Prison Complex and Modelo Prison displayed the same basic problem of oral communication as that observed during the first periodic visit (cf. Part I, paragraph 169). Prisoner and visitor were separated by a pane of thick glass, and had to speak with a raised voice to make themselves heard; this problem was particularly acute at Carabanchel, where the speaking holes were situated in a sill at the bottom of the glass pane rather than at face level. Further, at Modelo Prison only the visitor was provided with a seat.

Similarly, the delegation observed that communication was difficult in the booths used at Madrid I Prison for visits to prisoners from their lawyers.

**The CPT recommends that steps be taken to remedy the above-mentioned shortcomings.**

139. Further, **the CPT would once again invite the Spanish authorities to explore the possibility of having more open arrangements for ordinary visits (cf. also Part I, paragraph 169 as well as paragraph 51 of the CPT's letter of 15 March 1994).** Indeed, the visiting booths commonly found in Spanish prisons are scarcely conducive to the maintenance of good relations between prisoners and their families and friends.

140. Prisoners in Spain are also allowed a special visit (from their family or spouse/partner) once a month for a duration of at least one hour. As indicated in the report on the first periodic visit, such visits are to be welcomed provided they take place under satisfactory conditions (cf. Part I, paragraphs 170 and 171).

Conditions in the "vis-à-vis" rooms at Carabanchel were acceptable, and could even be described as very good in the rooms used at Madrid I Prison for special visits from family members.

Conditions were much less favourable in the vis-à-vis rooms at Modelo Prison; they offered a cheerless environment in which to pursue human relations. **The CPT invites the Spanish authorities to improve conditions in the rooms used for special visits at Modelo Prison.**

141. As regards correspondence, the CPT's delegation once again heard allegations of significant delays in the distribution of letters and other authorised objects sent to prisoners (cf. also the report on the first periodic visit, paragraph 177); these allegations emanated for the most part from Grade 1/Article 10(2) prisoners and certain foreign (South American) prisoners. In their follow-up report in response to the report on the first periodic visit, the Spanish authorities stated that instructions providing for a quicker and more efficient procedure, while at the same time satisfying security requirements, were under consideration. **The CPT would like to receive further information on this subject.**

142. Further, the CPT looks forward to receiving in due course a more complete response to the recommendation made in the report on the first periodic visit, to the effect that prisoners who do not receive regular visits from members of their families, because of the distance at which they live from the prison, should be given substantially improved possibilities for telephone contact with their families (cf. Part I, paragraph 176 as well as paragraph 53 of the Committee's letter of 15 March 1994).

c. execution of sentences in the prisoners' original social environment

143. Humanitarian considerations, not to mention the objective of social rehabilitation, speak in favour of prisoners serving their sentences in the region where they have family and social ties.

In this connection, the CPT's delegation observed that many prisoners were serving their sentences in establishments situated a long way from their families' homes.

**The CPT would like to receive the comments of the Spanish authorities on this matter.**

## 5. Health-care services

### a. introduction

144. The CPT attaches considerable importance to the general principle that prisoners are entitled to the same level of health care as persons living in the community at large. In the course of the second periodic visit to Spain, the CPT's delegation received information from the Spanish authorities which indicates that significant efforts are being made to attain this objective.

For this purpose, in every prison of a certain size, medical care is placed under the responsibility of a doctor holding the rank of deputy director. Further, cooperation between the authorities in charge of prison services and the health authorities of both central government and autonomous communities is being reinforced, with a view to improving the level of health care of prisoners.

The delegation was informed that the provision of primary care (including, inter alia, general out-patient care, certain specialist consultations and infirmary care, as well as the implementation of health education programmes, preventive medicine campaigns and epidemiologic control) will continue to be the duty of the prison services. Specialist out-patient and hospital in-patient care, with particular emphasis placed on psychiatric in-patient care, shall eventually be provided by the health authorities in public hospitals. Some agreements have already been entered into in this connection.

### **The CPT wishes to be informed of any further developments in this field.**

### b. health-care services in the establishments visited

#### *i. staff and facilities*

145. The information gathered by the CPT's delegation during the visit indicates that in most respects the prisons visited had satisfactory levels of staff, though the material facilities for the provision of health care were not always satisfactory.

146. At the **Modelo Prison**, in addition to the medical deputy director, health-care staff consisted of 10 doctors, two psychiatrists, a head nurse, 8 registered nurses and 18 auxiliary nurses.

Ambulatory care was provided in each of the galleries of the prison under adequate conditions. The infirmary consisted of five good sized (17.5 m<sup>2</sup>) double rooms which were adequately furnished, well lit and ventilated, and a special room equipped with positive pressure ventilation, for the respiratory isolation of patients with active pulmonary tuberculosis. Each room had a wash basin and a partitioned toilet, and benefitted from good access to natural light. The infirmary also disposed of a room specially set aside for psychiatric patients; however, it was in a poor state of repair and cleanliness. All rooms were fitted with a fire detector and were connected by an intercom system to nursing staff during the day and prison staff during the night. Common areas and other facilities were of an acceptable standard.

**The CPT recommends that steps be taken to improve material conditions in the room set aside for psychiatric patients.**

147. Physical conditions were found to be of a notably lower standard at the psychiatric unit, located within the infirmary premises. The common room was unwelcoming and noisy: it had few furnishings and a television set was permanently on during the day; further, the room's two large windows were obscured by opaque glass. The dormitories, each with four beds, were also fitted with opaque glass windows and were separated from the corridor by only curtain-covered openings. Allegations were heard of sexual exploitation or harassment between patients in the unit.

**The CPT recommends that:**

- **physical conditions in the common room of the psychiatric unit be improved, inter alia by placing clear glass in the windows;**
- **measures be adopted, aimed at attaining an acceptable level of privacy for patients at the psychiatric unit;**
- **night supervision be improved.**

The CPT's delegation was informed that additional space in the infirmary was being refurbished for psychiatric use, with similar characteristics to those observed in the existing premises. **The Committee trusts that account shall be taken of the above remarks in the refurbishment and operation of the new facilities for psychiatric use.**

148. Finally, members of the staff brought to the delegation's attention that fire-escape arrangements for the upper floors of the infirmary were quite inadequate. However, steps were apparently to be taken to remedy this shortcoming; **the CPT trusts that this is the case.**

149. At **Madrid I Prison**, in addition to the medical deputy director, health care was provided by eleven full time general practitioners, two dentists, one psychiatrist, eleven registered nurses and twelve auxiliary nurses. One general practitioner and one nurse were assigned to each gallery, the infirmary and admissions unit were serviced by two doctors each, and one doctor was assigned to the solitary confinement unit, servicing also the workshops and caring for patients on their return from hospital. At least one doctor and one nurse were present in the prison at night, and during public holidays and weekends. Additional specialist input was provided by an ophthalmologist and a dermatologist.

150. The infirmary contained eight individual rooms and a double room used for the isolation of patients on medical grounds, all of adequate size and fitted with a washbasin and toilet. There were also six dormitories used to accommodate between seven and nine patients each; however, the size of the dormitories was scarcely adequate for that level of occupation. Further, in two of the dormitories, access to natural light and ventilation was inadequate; Room 1, accommodating up to 9 patients, required artificial lighting throughout the day.

**The CPT recommends that:**

- **the number of persons that can be accommodated in each dormitory be reduced;**
- **access to natural light and ventilation in the dormitories be reviewed (in particular in Room 1).**

151. Patients accommodated in the infirmary had access to a spacious exercise yard during two hours every day, those in medical isolation benefitting from one daily hour of outdoor exercise.

152. Health care staff at the **Madrid Prison for Women** consisted of 6 general practitioners as well as 8 registered and 6 auxiliary nurses; further, a gynaecologist and a paediatrician (providing health care to children staying at the mother/child unit) attended the prison on a daily basis, and a psychiatrist and a dentist one and two days per week respectively. At least one doctor and one nurse were present in the prison at night, as well as during weekends and holidays.

In addition to other duties, each doctor was in charge of one particular area or programme (i.e. tuberculosis, suicide prevention, mother-baby care, HIV, health education, vaccination programmes and food).

153. The infirmary consisted of a 17 bed ward and six individual isolation rooms. The infirmary's ward was far from an ideal size for the number of patients. Further, the CPT's delegation was concerned to find that somatic and psychiatric patients were held together in the ward.

Moreover, the delegation observed that the material conditions in some of the specialist's rooms (e.g. that of the gynaecologist) left a great deal to be desired.

**The CPT recommends that the health-care facilities at the Madrid Prison for Women be reviewed in the light of the above remarks.**

*ii. medical screening on reception*

154. At the three prisons visited, all persons were medically examined within 24 hours of admission, although there appeared to be some differences as regards the extent of screening on reception. The delegation was positively impressed by the tuberculosis screening and the treatment offered, which was equivalent to that provided in the outside community.

155. At the **Modelo Prison**, medical examination on entry was aimed at detecting infectious diseases and psychiatric conditions. Assessment also concerned suicide prevention and the detection of traumatic injuries. Prisoners were offered vaccination for hepatitis B and tetanus, and tuberculosis screening was carried out systematically. HIV anti-body testing was not carried out as part of the entry procedure, although it could be requested during normal medical consultation. Chest X-rays were made of all known HIV+ prisoners, in view of the risk of tuberculosis.

The CPT's delegation was told that a doctor discussed hygiene and sanitary matters individually with every new arrival, particularly in respect of transmissible disease, and such discussions were repeated during normal consultations. However, the sanitary package issued to prisoners did not include written sanitary information. While welcoming the information given verbally to prisoners on admission and during normal medical consultation, **the CPT considers that written information on relevant health issues should also be systematically provided to prisoners.**

156. At the time of the visit, all prisoners were medically examined on arrival at **Madrid I Prison**, save those transferred from another prison. According to information subsequently received from the Spanish authorities, transferred prisoners are also now the subject of a medical examination, albeit limited in principle to the detection of injuries (cf. paragraph 25).

Medical examination on entry was designed to detect medical conditions requiring immediate treatment, and included tuberculosis screening. HIV, hepatitis A, B and C and syphilis tests were offered. However, it was not clear whether newly admitted prisoners were allowed a choice between those tests or if the offer was on an all-or-none basis. **The CPT wishes to receive clarification from the Spanish authorities on this matter.**

**The CPT would also like to receive information on the assessment of suicide risk on admission.**

157. At the **Madrid Prison for Women**, hepatitis B and syphilis screening was compulsory, and HIV testing was provided on a voluntary basis. Suicide risk was also assessed on admission. If the newly-arrived prisoner so requested, she was seen by the gynaecologist.

*iii. medical care provided to prisoners*

158. The CPT made a number of observations and recommendations of a general nature in this connection in its report on the first periodic visit (cf. Part I, paragraphs 139 to 151). During the second periodic visit, the CPT's delegation noted a positive evolution in certain areas.



However, it also found that there was still room for improvement, particularly in respect of counselling to patients (cf. paragraph 163) and psychiatric care. The latter was barely sufficient at the **Modelo Prison** and quite inadequate at both **Madrid I Prison** and the **Madrid Prison for Women**. Psychiatric care was provided at the Madrid I Prison by a psychiatrist with forensic training, who attended the prison two days per week. During that time (already insufficient to cover the needs of the men's prison, with up to 200 cases of serious psychiatric disorder) he was also required to look after patients in the nearby women's prison. In addition, he had the somewhat conflicting duty of preparing a number of forensic reports for the judicial authorities.

**The CPT recommends that the availability of specialist psychiatric ambulatory care at Madrid I Prison and the Madrid Prison for Women be augmented substantially.**

159. As regards more particularly the Madrid Prison for Women, the CPT's delegation was told there that obtaining the hospitalisation of mentally ill prisoners could prove very difficult. Reference was made to a psychotic woman who had to be kept in an isolation room of the prison's infirmary, for want of admittance to a psychiatric hospital.

In this connection, the CPT must emphasise once again that a mentally ill prisoner should be kept and cared for in a hospital facility which is adequately equipped and possesses appropriately trained staff. The infirmary at the Madrid Prison for Women does not constitute such a facility.

**The CPT recommends that appropriate steps be taken to ensure that mentally ill prisoners at the Madrid Prison for Women are hospitalised without delay.**

160. In its report on the first periodic visit, the CPT recommended that steps be taken to improve dental care in prisons and in particular to provide caries treatment free of charge (cf. Part I, paragraph 145). In their interim and follow-up responses, the Spanish authorities assured the CPT that, with some exceptions, curative dental care (as distinct from extractions) was available free of charge in the Spanish prison system, provided by dentists recruited by the prison service or by a private firm retained for that purpose. The CPT was also informed by the Spanish authorities that when the appropriate treatment (extractions, fillings, and, where necessary, more complex forms of treatment) was not available in a particular prison, the prisoner concerned would be transferred to one where such care could be provided.

In the course of the second periodic visit, the CPT's delegation was very concerned to note that apparently there had been little improvement as compared to the situation observed during the first visit. At **Madrid I Prison** (which benefited from the attendance of a state-appointed dentist three times per week and a private dentist twice per week), there was a heavy reliance upon treatment based on extractions. Fillings were said to be provided free of charge only to indigent sentenced prisoners who had been in prison for over two months. At the **Madrid Prison for Women**, dental care was based on extractions and prostheses; fillings were not performed. Indeed, the delegation observed that the equipment required to carry out fillings was not available at the prison, and was told that a prisoner would not be provided with such treatment even in the event of wanting and being able to pay the cost.

**The CPT must once again recommend that steps be taken without delay to provide caries treatment to prisoners; this treatment should be free of charge for those not in a position to pay for it.**

161. Although some complaints were heard from prisoners and doctors alike about the time dedicated by general practitioners to each patient, the CPT's delegation found that ambulatory care was in general adequate and the conditions under which it was provided, acceptable. In most cases, it appeared that a satisfactory doctor/patient relationship was established.

*iv. issues relating to HIV*

162. The CPT is pleased to note that its delegation found no evidence of the segregation of HIV+ prisoners who are well or of any other discriminatory measures vis-à-vis such prisoners.

163. In its report on the first periodic visit to Spain, the CPT stressed the importance of adequate prisoner counselling both before and - if appropriate - after HIV antibody testing (cf. Part I, paragraph 138) and it reiterated this view in the letter addressed to the Spanish authorities on 15 March 1994 (cf. paragraph 40 thereof). In the course of the second periodic visit, the CPT's delegation observed that, in general, there appeared to be a paucity of counselling. By contrast, appropriate information on preventive measures was provided.

At the **Modelo Prison** the situation was better; counselling extended to discussions with HIV+ prisoners as well as with members of their family and there was a regular follow-up of patients during the asymptomatic phase of the illness.

**The CPT invites the Spanish authorities to take steps to ensure that adequate pre- and post HIV test counselling is provided in all prisons.**

164. As regards the question of confidentiality of HIV serology, the official form completed by prison medical services regarding newly admitted prisoners suggests that the HIV status of prisoners is systematically communicated to prison authorities at central level (cf. item 56 of the form, falling under heading VII on "Results of tests").

However, the CPT was subsequently put in possession of a copy of instructions issued on 17 March 1994 by the Director General of Prison Services regarding the treatment of medical information of a confidential nature. These instructions state that only the patient and medical staff involved in the diagnosis and treatment shall have access to such information. The CPT assumes that information on HIV serology will be treated as medical information of a confidential nature, within the meaning of the above instructions; **it would like to receive confirmation on this point.**

v. *access to a fully-equipped hospital service*

165. A prison's health-care service should be able to count on the support of a fully-equipped hospital service, for the purposes of specialist examinations and hospitalisation in appropriate cases. It appeared that such support was available to the health-care services of all three prisons visited in respect of areas other than psychiatry.

166. The **Modelo Prison** could transfer patients whose condition so required to Barcelona's General Hospital ("Hospital Clínico") and to the Penitentiary Unit at the Terrassa Hospital. However, the 10 bed penitentiary unit at the Barcelona Hospital was due to close in May 1994, following which the hospital was to admit emergency cases only. As from May 1994, all prisoners requiring somatic treatment in a hospital would be transferred to the Terrassa Hospital's penitentiary unit.

167. The **Penitentiary Unit at the Terrassa Hospital** is a modern purpose-designed annex to the Hospital, containing 8 individual and 16 double rooms for in-patient treatment. At the time of the visit only one section, comprising 9 rooms with capacity to accommodate 18 patients, was in use. Out-patient specialist consultation, in support of the prison infirmary, was also provided.

The unit, which is functionally independent from the hospital, is located within spacious and well-equipped premises. Medical staff, all employed by the hospital<sup>12</sup>, consisted of two full time medical interns, supervised by a medical coordinator; further, consultations are regularly provided by doctors from the main hospital. Nursing staff consisted of 11 registered nurses and 9 auxiliary nurses. The level of care at the Terrassa Hospital Penitentiary Unit, and the conditions under which it is provided, can be regarded as a model of hospital care for prisoners.

168. However, at the time of the visit, the Unit only cared for male patients; **the CPT would like to receive information on the arrangements made for female prisoners in Catalonia who require somatic care in a hospital.**

169. The two prisons visited in Madrid could refer patients to the General Penitentiary Hospital (cf. also paragraphs 172 to 177) and, where necessary (e.g. cardiology, intricate cases of internal medicine or surgery, terminally-ill patients, maternity, etc.), to general hospitals.

170. The CPT's delegation visited **Gregorio Marañón Hospital in Madrid**, where it saw six somatic patients who had been referred by prison medical services. All of them suffered from HIV-related diseases, including pulmonary tuberculosis; three of them were in a terminal phase.

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<sup>12</sup> Internal security at the unit is the responsibility of prison staff (provided by the Department of Justice), while perimeter security is assured by the Catalan autonomous police ("Mossos d'Esquadra").

The treatment received at Gregorio Marañón Hospital by persons deprived of their liberty was equivalent to that offered to other patients. Custody and security requirements did not appear to impair treatment, and the restraint of patients was decided solely on medical grounds. The delegation was told that no patients were restrained or attached to items of furniture for custodial reasons; the last case in which such methods were employed apparently dated back several years.

171. The referral of psychiatric patients to a hospital was a source of difficulty in the Modelo Prison and both of the Madrid prisons visited.

At the **Modelo Prison**, the CPT's delegation was told that before the Autonomous Government took over penitentiary services in Catalonia, some 10 years ago, psychiatric patients could be referred to Alicante's Penitentiary Psychiatric Hospital. Since then, patients whose condition requires hospitalisation are very seldom admitted to hospital. Instead, in case of crises or during acute phases of the illness they are cared for at the psychiatric unit in the infirmary of the prison; once the crisis is over, they rejoin the general prison population. The delegation was informed that existing plans foresaw the opening of a psychiatric section in the Penitentiary Unit at the Terrassa Hospital. **In the CPT's opinion, this would only be satisfactory on condition that the psychiatric section was provided with facilities for psychotherapeutic activities and open-air exercise.**

At **Madrid I Prison**, patients could be referred to the psychiatric unit of the General Penitentiary Hospital. The CPT has already indicated that conditions in that unit were not satisfactory (cf. paragraph 14, third sub-paragraph). In a memorandum of the General Sub-Directorate of Prison Health (cf. paragraph 175) it is stated that, after the General Penitentiary Hospital's closure, psychiatric care shall be provided in each prison, with placement of the patient in an infirmary with round-the-clock presence of nursing staff in acute phases of the disturbance. Patients from the Madrid area prisons who require treatment in a hospital shall be referred to Gregorio Marañón Hospital. **The CPT would like to be informed on progress made in this connection.**

**Further, the Committee would like to receive information on arrangements made for patients from the Madrid Prison for Women who require psychiatric care in a hospital (cf. also paragraph 159).**

c. the General Penitentiary Hospital

172. The General Penitentiary Hospital provided specialist out-patient consultation (11,513 consultations during 1993) as well as in-patient care (1,934 admissions in 1993, of which 744 were programmed and 1,190 were emergencies), covering a range of surgical and non-surgical specialities. At the time of the CPT's visit, 129 men and 10 women were being cared for in the hospital. The average waiting period for admission of non-urgent cases was of 201 days and the average stay was of 22.5 days.

173. The CPT shall refrain from providing a full account of the situation observed in the hospital, given that it was scheduled to close on 15 October 1994<sup>13</sup>.

However, some remarks are called for as regards three parts of the hospital, namely the psychiatric unit, the internal medicine section and the "judicial custody" unit.

174. The psychiatric unit was situated in an older part of the building, at basement level. Patients were accommodated in six individual rooms (each containing a washbasin, a toilet and a fixed bed) and four reasonably spacious dormitories accommodating four patients each. The unit also had a common room with a table, chairs and a television. Artificial lighting and ventilation were adequate, but the unit's basement level location meant that there was only limited access to natural light.

175. Whereas the material conditions in the unit did not give rise to particular concern, the same cannot be said of the regime. Persons held at the unit were not allowed access to their personal belongings and were only issued with pyjamas and dressing gowns. Further, no activities whatsoever were offered to patients, be it leisure activities or games, occupational therapy or teaching; nor did they benefit from any open-air exercise. Patients passed the day pacing up and down the central corridor and, occasionally, speaking to each other. To sum up, they were held in an anti-therapeutic setting, and this for prolonged periods of time; several had been held there for more than one year. The unit was the subject of an immediate observation, with the recommendation that it be substantially improved without delay or withdrawn from service (cf. paragraph 14).

Subsequently, by letter of 22 November 1994, the Spanish authorities forwarded to the CPT a memorandum of the General Sub-Directorate of Prison Health dated 18 November, which indicated that the General Penitentiary Hospital was still in use, admitting inter alia psychiatric patients. It should be stressed that the immediate recommendation made by the CPT's delegation in respect of the psychiatric unit of the General Penitentiary Hospital was that it be substantially improved without delay or withdrawn from service.

Bearing in mind what has been indicated in paragraph 171, third sub-paragraph, **the CPT would like to receive within three months clarification of the current position regarding the psychiatric unit, i.e. whether it has been closed and, if not, what improvements have been made to the regime applied in the unit.**

176. In certain respects, conditions were similar at the internal medicine section, which, according to information subsequently received, was closed on 5 October 1994. It accommodated 20 patients suffering from HIV-related disease with various complications; some of the patients seen by the CPT's delegation were acutely and seriously ill, often with a life expectancy of less than one year. A doctor visited the unit every day, but did not examine patients regularly. No activities (not even books) and no open air exercise were available to patients; nor were they visited by a social worker. Further, masks were routinely used without medical justification, thereby causing unnecessary additional distress to patients. This substandard hospice was pervaded by a feeling of despair and hopelessness.

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<sup>13</sup> though the CPT has subsequently learned that the closure of the hospital was not completed by that date (cf. paragraph 175).

**The CPT would underline that all patients, however serious their condition may be, including those who are terminally ill, ought to be treated in a manner which respects human dignity.**

Patients in slightly more advanced phases of their disease, who were cared for at the Gregorio Marañón Hospital, fared substantially better (cf. paragraph 170).

177. The three cells of the judicial custody unit were used for the medical management of prisoners with "body-pack syndrome" (concealment of drugs within the body). The cells were situated in a rather isolated location, with the result that the necessary medical supervision was not assured.

**In this connection, the CPT would stress that given the risk run by a prisoner affected by the body-pack syndrome (namely perforation of the sachet, resulting in acute poisoning or intestinal obstruction) such prisoners should be placed under close medical supervision.**

d. further remarks

178. Information received in the course of the visit indicated that an increasing number of terminally-ill prisoners were dying in Spain while still in custody. In this connection, the CPT wishes to emphasise that humanitarian considerations speak in favour of the release of prisoners subject to a short-term fatal prognosis.

During the second periodic visit, the CPT's delegation again heard much criticism of the allegedly unsatisfactory and inconsistent application of Article 60 (2) of the Prison Rules, which enables prisoners suffering from a very serious and incurable disease to benefit from conditional release even though they may not meet the usual requirement of having completed three-quarters of their sentence. This criticism emanated not only from prisoners awaiting a ruling on their application for conditional release, or whose request had been turned down, but also from prison medical staff and other sources.

**The CPT would like to receive the comments of the Spanish authorities on this subject.**

179. The Catalan prison authorities informed the CPT's delegation that they were applying methadone treatment programmes to drug-dependent prisoners. It was put to the delegation that this policy had the effect of substantially reducing the amount of drugs which circulated in prison, hence diminishing the risk of disease transmission.

Prison services in the rest of Spain, including in the Madrid prisons visited, did not apply a methadone substitution treatment, not even to prisoners who had been under such treatment before their admission to prison. More generally, no adequate treatment programmes for prisoners with drug/alcohol dependencies were observed.

**The CPT would like to receive further information from the Spanish authorities concerning their current approaches and future plans as regards the treatment of prisoners suffering from acute withdrawal symptoms and the provision of long-term treatment for prisoners with drug/alcohol dependencies.**

180. Prison health-care services can contribute to the prevention of violence against detained persons, through the systematic recording of injuries and, if appropriate, the provision of general information to the relevant authorities. Information could also be forwarded on specific cases, though as a rule such action should only be undertaken with the consent of the prisoners concerned. The CPT requested information from the Spanish authorities on this subject in its report on the first periodic visit (cf. Part I, paragraph 157).

From the information received and the delegation's discussions with medical staff during the second periodic visit, it appeared that the recording of injuries was in principle guaranteed. Doctors are instructed to note all traumatic lesions in the clinical record; a special form must then be completed, including information on the aetiology of the injuries (according to the prisoner's own account). The report is transmitted to the supervisory judge through the medical deputy director of the prison.

However, from individual cases considered it appeared that practice varied somewhat and, on occasion, left something to be desired.

**The CPT recommends that steps be taken to ensure that any signs of violence observed when a prisoner is medically screened on his admission are fully recorded, together with any relevant statements by the prisoner and the doctor's conclusions; further, this information should be made available to the prisoner. The same approach should be followed whenever a prisoner is medically examined following a violent episode in the prison.**

## **6. Other issues**

### a. staff resources and training

181. The issue of staff resources in prisons was touched upon in the report on the first periodic visit (cf. Part I, paragraph 165), and the Spanish authorities subsequently informed the Committee that procedures were under way for the recruitment of a substantial number of staff.

Nevertheless, in the course of the second periodic visit, the CPT's delegation found that the ratio of staff to prisoners could on occasion be alarmingly low. This was particularly the case at Madrid I Prison, where it was commonplace for a wing accommodating up to 600 prisoners to be staffed during the day by only four prison officers. In this connection, it should be emphasised that an inadequate staff/prisoner ratio can lead to an insecure environment, for both staff and prisoners; further, it will render the provision of an acceptable regime of activities well-nigh impossible.

**The CPT recommends that the Spanish authorities carry out a general review of staffing levels in Spanish prisons, in order to ascertain whether they are adequate in the light of current and envisaged prison population levels.**

182. As stated in the report on the first periodic visit (cf. Part I, paragraph 199), the training of prison officers is a subject to which the CPT attaches the greatest importance. There is arguably no better safeguard against the ill-treatment of a prisoner than a properly-trained prison officer.

The CPT is grateful to the Spanish authorities for the information on this subject provided in its interim report, in response to the report on the first periodic visit. **The Committee would also like to receive information on the length and content of training provided to prison officers in the Catalan Prison Service.**

Further, **the CPT wishes to recall the recommendation made in the report on the first periodic visit, that prison officers who work in establishments that accommodate a large number of foreign prisoners be given special training** (cf. Part I, paragraph 202 as well as paragraph 60 of the Committee's letter of 15 March 1994).

183. Finally, the CPT observed that a high proportion of newly recruited prison officers had benefitted from a university education. In principle, this is a phenomenon to be welcomed, even if it is a result more of the prevailing unfavourable employment situation in Spain than of an underlying interest in penitentiary matters. It would seem prudent for appropriate measures to be taken to ensure that as many of these persons as possible pursue a long-term career in the prison service.

**The CPT would like to receive the comments of the Spanish authorities on this matter.**

b. the supervisory judge

184. The role played by the supervisory judge was considered in some depth in the report on the first periodic visit (cf. Part I, paragraphs 185 to 191), and the CPT is grateful to the Spanish authorities for the extensive information on this subject which was subsequently provided.

185. The supervisory judge has a key role to play with regard to safeguarding the rights of prisoners and correcting abuses. However, as in 1991, the delegation which carried out the second periodic visit gained the impression that this role was being undermined by the wide range of the judge's functions and the heavy workload which resulted therefrom. Discussions with both staff and prisoners in the establishments visited suggested that the supervisory judge was a rare visitor to the detention area, and this impression was reinforced during talks with two supervisory judges.

In this connection, **the CPT must reiterate the recommendation made in the report on the first periodic visit:**

- **that supervisory judges visit each establishment under their responsibility at least once a week, irrespective of whether any prisoners have requested to see the judge;**
- **that in the course of this weekly visit the supervisory judge view the whole of the prison premises and enter into direct contact with both prisoners and prison staff.**



## **D. Detention Centres for Minors**

### **1. Introduction**

186. Under Spanish law, criminal proceedings cannot be brought against a minor under the age of 12. At most, the competent local or regional authorities may take the child into care.

When a criminal offence is committed by a minor aged 12 or more, but under 16, the case is referred to a special jurisdiction, the Court for the Protection of Minors. Minors under the age of 16 remain formally exempt from criminal responsibility (cf. Article 8 (2) of the Penal Code). However, a ruling may be issued ordering that such a minor be detained in a reform centre.

A minor aged 16 or more, but under 18, has an attenuated criminal responsibility. However, at the discretion of the judge concerned, such a person may be placed in a reform centre rather than committed to prison (cf. Articles 9(3) and 65 of the Penal Code).

187. The CPT's delegation visited two Centres for minors in Madrid, situated adjacent to each other: **El Madroño**, a place of remand detention and assessment, and **Renasco**, a closed centre for minors subject to a definitive detention measure. Both Centres admitted boys and girls.

The delegation was informed that the average length of stay at El Madroño was 45 to 55 days (the decision to place in remand detention to be reviewed within one month by the judge concerned), and at Renasco six to seven months (the maximum possible detention measure being two years).

188. It should be said at the outset that the delegation heard no allegations of ill-treatment by staff at either El Madroño or Renasco. More generally, the delegation was impressed by the positive nature of the relations between the staff of the Centres and the minors held there.

### **2. Material conditions and activities**

189. **El Madroño** has an official capacity of 15 minors (10 boys and 5 girls), and the Centre was accommodating 11 minors at the time of the visit. The Centre's premises were modern, spacious, well-equipped and in a good state of repair. Further, it was adequately staffed (16 educators, social worker, teacher, etc.).

190. Each minor had his/her own room, which was of a good size (8 to 9 m<sup>2</sup>), comfortably furnished and well lit and ventilated. However, in the girls' rooms, the otherwise satisfactory conditions were marred by the fact that the windows had been painted over, thereby reducing access to natural light and more generally creating a rather depressing atmosphere. The delegation was informed that this measure had been adopted in order to prevent acts of exhibitionism (the rooms faced the Centre's activity facilities and neighbouring residential buildings).

While recognising the problem, the CPT is sure that other - more satisfactory - means of resolving it could be found; **the CPT recommends that the paint on the glass windows in the girls' rooms be removed.**

191. The minors were kept fully occupied during the day. For this purpose, the Centre had good teaching, workshop and sports facilities. Further, the minors also had access to a common room equipped with TV, games, etc.

192. The **Renasco** Centre had a distinctly less homely feel about it. Nevertheless, the material conditions were on the whole quite satisfactory, and, like El Madroño, the Centre appeared to be adequately staffed (19 educators, 9 auxiliary staff, social worker, etc.).

193. The Centre could accommodate 15 minors (12 boys and 3 girls) and 10 boys were in residence at the time of the visit.

The boys' rooms were of a good size (approximately 10 m<sup>2</sup>) and well lit and ventilated. However, they were equipped in a rather spartan manner. The girls' rooms were somewhat smaller (approximately 6 m<sup>2</sup>) and moreover, were located in a rather cold and humid part of the building. On the other hand, they were satisfactorily furnished.

**The CPT invites the Spanish authorities to improve the standard of equipment in the boys' rooms and to explore the possibility of locating the girls' rooms in another part of the building.**

194. Unlike the situation at El Madroño, the minors' rooms were locked at night; further, they were not equipped with a call bell. As a result, a minor who needed assistance at night would have to call for help and/or bang on the door. The risk of a minor in need being left unattended would be significantly reduced if a call bell system existed. **The CPT therefore recommends that the minors' rooms at Renasco be equipped with a call bell;** the potential problem of abuse of the call bell should be dealt with via the disciplinary system.

It was also apparent that the minors did not have access to a proper toilet facility at night (the delegation observed that the boys' rooms were equipped with chamber pots). **The CPT recommends that appropriate measures be taken to ensure that minors held at the Renasco Centre have ready access to a proper toilet facility at all times.**

195. As at El Madroño, residents at Renasco were provided with a range of activities during the day (school, various types of workshops, sport activities), and the facilities for these activities were quite adequate. Further, there was a large and well-equipped common room for the minors.

### 3. Discipline

196. The information received by the Committee's delegation revealed that breaches of discipline ranged from being scruffily clad and behaving without propriety (conduct which is not unusual among young persons) to assaulting a fellow inmate or member of staff and drug peddling. The sanctions attached to such breaches ranged from a verbal reprimand to 48/72 hours isolation, purged in the minor's own room. The most common sanction appeared to be the deprivation of recreation for up to two weeks (up to one month at Renasco).

Sanctions were imposed by the educators; however, the most severe sanctions required ratification by the Director of the Centre and notification to the competent judge.

197. The delegation received no evidence of excessive resort to disciplinary sanctions. Nevertheless, the existing procedure in this very sensitive area could usefully be developed as regards both formal safeguards and the recording of sanctions imposed.

#### **The CPT recommends:**

- **that a minor be guaranteed a right to be heard on the subject of the offence it is alleged he/she has committed;**
- **that there be a formally recognised right of appeal to a higher authority against sanctions imposed (i.e. to the Director of the Centre, as regards sanctions imposed by educators, and to the competent judge as regards sanctions imposed by the Director);**
- **that a register be kept in each Centre, containing full details of all disciplinary sanctions imposed.**

198. "Self-injury" fell under the category of special breaches of discipline to which the sanction of isolation applied. The CPT wishes to stress that a disciplinary sanction - and more particularly an isolation measure - could often be an inappropriate and even dangerous response to an act of self-injury.

**The CPT recommends that the underlying motives for every instance of self-injury be examined by a competent member of the medical staff before that conduct is sanctioned as a breach of discipline.**

### 4. Medical issues

199. The level of medical provision at El Madroño and Renasco appeared on the whole to be adequate. General medical care for minors in the two centres was provided by a doctor and a nurse; a psychiatrist also attended the Centres. However, as regards specialist care, members of the staff told the delegation that appropriate dental care was not always assured; further, the absence of a reference psychiatric hospital for the minors apparently on occasion posed a problem. **The CPT would like to receive further information on these matters.**

200. The CPT is concerned by the approach followed concerning HIV antibody testing. New arrivals are systematically the subject of an HIV test and the CPT's delegation was informed that the result of the test was communicated to the Centre's staff and the Director, as well as to the judge in charge of the minor's file and the regional authority responsible for the detention centre (i.e. the Madrid Autonomous Community). The CPT would emphasise that such information should be protected by strict medical confidentiality and **recommends that appropriate measures be taken to ensure that this is the case.**

**The CPT would also stress the importance of adequate counselling both before and - if appropriate - after an HIV test.**

**E. Psychiatric institutions**

201. The CPT's delegation paid a brief visit to a large psychiatric hospital close to Barcelona, namely the **Santa Coloma Mental Hospital**. The purpose of the visit was to observe the management of disturbed patients admitted involuntarily; consequently, it focused on the 32-bed main admission unit.

202. The delegation's discussions with health-care staff and recently admitted patients, as well as its examination of patient case files, indicated that treatment was administered in a professionally correct manner. No evidence was gathered of either the abusive use of force or misuse of medication.

203. However, the use of instruments of physical restraint was not satisfactorily recorded, either in the patient's file or in a special register. One patient seen by the delegation had been restrained once, and a second patient twice, on one occasion for up to six hours. In neither case did the patient's file or the nursing notes give a clear indication of a medical order to use physical restraint (it appeared that the order is given verbally by the responsible doctor, usually over the phone); further, no clear indication of the frequency of observations carried out during physical restraint was given in the nursing notes.

204. In view of the enhanced risk of ill-treatment in situations involving the use of instruments of physical restraint, it is important that resort to such instruments be both the subject of a defined policy and fully recorded.

**The CPT recommends that:**

- **a detailed medical policy on recourse to instruments of physical restraint be laid down dealing in particular with: the types of cases in which application of such instruments is permissible; their duration and frequent review; the provision of appropriate human contact; and the staff's duty of increased attention;**
- **instruments of physical restraint be applied only on the express instructions of a doctor or immediately brought to the attention of a doctor for approval;**
- **every use of such instruments be recorded in the patient's file and in an appropriate register, with an indication of the times at which the measure began and ended, the circumstances of the case and the reasons for resorting to the measure.**

205. Members of the staff at Santa Coloma Mental Hospital told the CPT's delegation that various injuries (mainly bruising and marks of handcuffs applied too tightly) were frequently observed when disturbed persons were taken to hospital by the law enforcement agencies. In such cases, the persons concerned were nearly always handcuffed and often bound. One person interviewed by the delegation, held in the hospital at the time of the visit, said that she had been treated roughly by police officers (beaten and dragged by the hair and clothes); however, no injuries were recorded by hospital staff on arrival.

Handling mentally disturbed persons will always be a difficult task and, whenever possible, this task should be given to specially trained staff. **The CPT would like to receive information from the Spanish authorities on any specific training received by law enforcement officials in the handling of mentally disturbed persons.**

### III. RECAPITULATION AND CONCLUSIONS

#### A. Law enforcement agencies

206. A number of persons interviewed by the CPT's delegation in the course of the second periodic visit alleged that they had been subjected to torture and/or other forms of severe ill-treatment while in the custody of the Civil Guard. All of them had been arrested in relation to terrorist activities. These allegations together with other information gathered led the delegation to reiterate the view, expressed by the Committee in the report on the first periodic visit, that it would be premature to conclude that the phenomenon of torture and severe ill-treatment had been eradicated in Spain.

That observation must now be read in the light of the report drawn up following the ad hoc visit to Spain in June 1994. In that report, the CPT stated that the information at its disposal was sufficient to give rise to legitimate concern about the manner in which at least certain of the persons arrested in early June 1994, as presumed participants in one or more of the offences referred to in Article 384 bis of the Code of Criminal Procedure, had been treated while in the custody of the Civil Guard. This led the Committee to recommend that a general investigation of a thorough and independent nature be carried out into the methods used by the Civil Guard when arresting and questioning such suspects.

207. The number of allegations of less severe forms of ill-treatment of detainees by police officers or members of the Civil Guard was on the whole lower than that recorded during the first periodic visit in 1991, but remained sufficiently high as to give cause for concern.

208. The CPT has reiterated the importance of law enforcement officials receiving appropriate training in interpersonal communication skills and of senior officers delivering the clear message that the ill-treatment of detained persons is not acceptable and will be dealt with severely.

The need for prosecuting authorities and the courts to examine diligently all complaints of such treatment brought before them and, where appropriate, to impose a suitable penalty, has also been underlined. Further, the CPT has requested that judges and public prosecutors be encouraged to exercise on the spot supervision of places of detention and, as regards persons arrested as presumed participants in one or more of the offences referred to in Article 384 bis of the Code of Criminal Procedure, to have more frequent recourse to the possibilities offered by paragraph 3 of Article 520 bis of the Code.

209. As regards formal safeguards against ill-treatment, it is clear that the position in respect of incommunicado detention and access to a lawyer has not evolved since 1991.

The CPT has reiterated its recommendation that the period during which a detained person can be denied the communication provided for in Article 520 (2)(d) of the Code of Criminal Procedure (i.e. to have the fact and place of his detention made known to a third party of his choice) be shortened substantially; a maximum period of 48 hours has been suggested. The Committee has also called upon the Spanish authorities to comply with its previously-made recommendation that persons detained by the law enforcement agencies be granted the right of access to a lawyer as from the outset of their detention, it being understood that in the case of a detainee held incommunicado, that lawyer may be officially appointed.

210. The CPT has made a number of other recommendations relating to such matters as access to a doctor, the drawing up of a code of practice for the conduct of interrogations and custody records. As regards more particularly persons arrested as presumed participants in one or more of the offences referred to in Article 384 bis of the Code of Criminal Procedure, the Committee has indicated that it would be highly desirable - from the standpoint of the prevention of ill-treatment - for such persons to be systematically brought before the judge concerned, prior to him taking a decision under Article 520 bis, paragraph 1, on the issue of extending the detention period beyond 72 hours.

211. The measures of a preventive nature taken by the Spanish authorities as regards transfers of prisoners have been noted with satisfaction. The new "Protocol on transfers" and the related instructions regarding the transfer of prisoners contain important safeguards against ill-treatment. The CPT has sought the views of the Spanish authorities on the possibility of applying a similar system to transfers of detained persons who have not (yet) been admitted to prison.

212. Material conditions of detention in the police/Civil Guard establishments visited varied considerably. They were of an acceptable level in some establishments and very good in one (the Minors Police Unit in Madrid). However, in the majority of the establishments, the conditions of detention left something - on occasion, a great deal - to be desired.

The shortcomings observed were of a diverse nature: cells of very limited size, poor state of repair and cleanliness of cellular accommodation, overcrowding, sanitary facilities in an unhygienic state and/or which did not allow for their use in private, failure to provide detainees with mattresses, inadequate lighting or ventilation, absence of outdoor exercise facilities, etc.

In two of the places of detention visited, namely the El Antiguo detention facilities of the Guipúzcoa Headquarters of the Civil Guard and the cellular accommodation of the Central Duty Inspection of the National Police in Madrid (Puerta del Sol), the situation was such that the CPT's delegation made the immediate observation that the conditions should be substantially improved without delay or the premises withdrawn from service.

The CPT has recommended that conditions of detention in the other places visited be reviewed in the light of the delegation's findings. Moreover, the Committee has reiterated its recommendation that the Spanish authorities take appropriate steps to ensure that the conditions of detention in all establishments of law enforcement agencies meet the general standards set out in the CPT's reports.



**B. Places of detention for foreigners**

213. In the course of the second periodic visit, the CPT's delegation found that conditions of detention at the Moratalaz Centre remained much the same as those observed in 1991, despite the recommendations made in the report on the first periodic visit. The Centre's Director stated that he had not been made aware of the remarks made in that report.

Material conditions at the Detention Centre for foreigners in Barcelona were on the whole acceptable, with the notable exception that there was no open air exercise facility. However, as at the Moratalaz Centre, improvements were required as regards recreational activities for detainees and the provision to them of relevant information. Further, in the light of the delegation's on-site observations, the CPT has recalled the recommendations and comments made in the report on the first periodic visit concerning the selection of police officers for supervisory duties in detention centres and the carrying of - and recourse to - truncheons.

214. The considerable improvement in the special transit area at Barajas Airport, used to hold foreigners refused entry to Spain or in the process of being expelled from the country, should be emphasised. Nevertheless, conditions remain inadequate for prolonged detention (i.e. exceeding a few days) and the CPT has noted with interest that further improvements are foreseen.

**C. Prisons**

215. With the exception of Madrid II Prison, practically no allegations of recent acts of ill-treatment of prisoners by prison officers were heard by the CPT's delegation in the establishments visited. More generally, relations between staff and inmates appeared to be reasonably positive; the delegation was particularly impressed by the quality of the staff in the Carabanchel Prison Complex.

216. Certain prisoners held in isolation units of Madrid II Prison alleged that they had been beaten by prison officers using truncheons; further, one prisoner alleged that he had been attached (by means of handcuffs) throughout the night to a metal ring, and another, that incapacitating gas had been sprayed inside his cell.

In the light of those allegations, the CPT has sought information on complaints of ill-treatment made by prisoners in Madrid II Prison over the last two years and action taken upon them. Further, it has reiterated the recommendation made in the report on the first periodic visit, that all the metal rings inserted in the concrete blocks which form the base of cell beds and tables at the establishment be removed.

217. The use by prison officers of "sprays having an adequate effect" was banned on a provisional basis on 7 April 1994. The CPT welcomes this decision, and has recommended that the use of such sprays within all places of detention, whatever their nature, be prohibited. Further, the Committee has reiterated its previously-made recommendation that a central register be kept in each prison, containing full information on every instance of resort to means of coercion.

218. Little progress was observed in respect of the treatment of prisoners considered to be extremely dangerous or unadapted to an ordinary prison regime. In this connection, the CPT has, once again, stressed its view that a combination of long periods of isolation, austere material conditions of detention and absence of activities amounts to inhuman treatment.

Information has been sought on the interplay between the restrictive regime provided for in Article 10(3) of the General Organic Law on Prisons and the FIES system. Further, the CPT has recommended that in the course of the review of the operation of these provisions currently taking place, full account be taken of the recommendations made on this subject in its report on the first periodic visit.

219. Overcrowding and certain other shortcomings in material conditions of detention were observed in the prisons visited; further, with the exception of inmates at the Madrid Prison for Women, prisoners were not offered a satisfactory programme of organised activities. The material conditions of detention of many prisoners in Modelo Prison (in particular those located in Galleries 3 and 4) and of certain prisoners in Madrid I Prison (in particular those accommodated in the double cells, on the first floor of the 6th Gallery) were such that they could fairly be described as inhuman and degrading. The CPT has made a number of specific recommendations on these matters and, more generally, has recommended that a very high priority continue to be given to measures to reduce overcrowding in the Spanish prison system.

220. As regards contact with the outside world, conditions in the booths used for visits from family members were equivalent to those observed in the prisons visited by the CPT in 1991, and have been the subject of similar recommendations. Further, the CPT has again invited the Spanish authorities to explore the possibility of having more open arrangements for ordinary visits.

The CPT has also requested the comments of the Spanish authorities on the issue of prisoners serving their sentences in establishments situated a long way from their families' homes. Humanitarian considerations, as well as the objective of social rehabilitation, speak in favour of prisoners serving their sentences in the region where they have family and social ties.

221. It has been noted that significant efforts are being made in Spain to attain the objective of providing the same level of health care in prisons as that available to persons living in the community at large, and that cooperation between the authorities in charge of prison services and the health authorities is being reinforced.

The information gathered by the CPT's delegation indicates that in most respects the prisons visited had satisfactory levels of health-care staff, though on occasion the material facilities for the provision of health care left something to be desired. The overall standard of medical care provided to prisoners appeared to have improved, as compared to the situation observed in 1991. However, there was still room for amelioration in certain areas. This was in particular the case as regards psychiatric care; further, curative dental care (as distinct from extractions) was still not available to prisoners free of charge.

The Committee has made a number of recommendations and comments on the above and other matters related to health-care services in prisons.

222. Given that it was scheduled to close on 15 October 1994, the CPT has refrained from providing a full account of the situation observed in the General Penitentiary Hospital. However, it has made remarks in respect of the Hospital's psychiatric unit (which was the subject of the immediate observation that it should be substantially improved without delay or withdrawn from service), the internal medicine section and the judicial custody unit (and, more particularly, the medical management of prisoners with "body-pack syndrome").

**D. Detention Centres for Minors**

223. No allegations were heard of ill-treatment by staff at the El Madroño and Renasco Centres for Minors. The CPT's delegation was impressed by the positive nature of the relations between the staff of the Centres and the minors held there.

224. Material conditions of detention were found, on the whole, to be quite satisfactory, as were activities and health-care. However, some recommendations and comments have been made with a view to remedying certain specific shortcomings.

225. Further, as regards the existing disciplinary procedure, the CPT has concluded that it could usefully be developed as regards both formal safeguards and the recording of sanctions imposed.

**E. Psychiatric Institutions**

226. The CPT's delegation made an appraisal of the management of disturbed patients admitted involuntarily to the Santa Coloma Mental Hospital. It gathered no evidence of either the abusive use of force or misuse of medication. However, it was observed that the use of instruments of physical restraint was not satisfactorily recorded, either in the patient's file or in a special register.

227. In view of the enhanced risk of ill-treatment in situations involving the use of instruments of physical restraint, the CPT has recommended that a detailed medical policy on recourse to such instruments be laid down, that they be applied only on the express instructions of a doctor or immediately brought to the attention of a doctor for approval, and that their use be fully recorded.

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**F. Action on the CPT's recommendations, comments and requests for information**

228. The various recommendations, comments and requests for information formulated by the CPT are summarised in Appendix I.

229. Having regard to Article 10 of the Convention, the CPT requests the Spanish authorities to provide within twelve months a report giving details of action taken to implement the recommendations made in this report.

The CPT trusts that the Spanish authorities shall also provide in the above-mentioned report reactions to the comments formulated in this report, as well as replies to the requests for information made.

As regards the immediate recommendations made by the CPT's delegation at the end of its visit to Spain (cf. paragraph 14), the Committee has requested that further information concerning their implementation be provided within three months (cf. paragraphs 33, 43 and 175).

## **APPENDIX I**

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

#### **General remarks**

##### comments

- delays suffered by the visiting delegation on arrival at a few places of detention highlight the need for States Parties to disseminate to all the relevant authorities, at the appropriate time, detailed information on the CPT's mandate and the obligations of the authorities concerned (paragraph 10);
- it is important that the contents of visit reports drawn up by the CPT are brought to the attention of all the relevant authorities in an appropriate form (paragraph 11).

##### recommendations

- the use of "sprays having an adequate effect" to be prohibited within all places of detention, whatever their nature (paragraph 105).

#### **A. Law enforcement agencies**

##### **1. Torture and other forms of ill-treatment**

##### comments

- it is important that:
  - . law enforcement officials receive appropriate training in the art of handling, and more particularly of speaking to, persons in their custody (i.e. interpersonal communication skills);
  - . senior law enforcement officials make it clearly known that the ill-treatment of detained persons is not acceptable and will be dealt with severely (paragraph 21);
- the absence of marks or conditions consistent with allegations made of ill-treatment should not necessarily be treated by public prosecutors and judges as proof that such allegations are false (paragraph 22);
- the Committee trusts that the "Protocol on transfers", dated July 1994, and the instructions issued will be strictly applied (paragraph 25);

- the Spanish authorities are invited to explore means of remedying the failing observed in Civil Guard vehicles used for transporting prisoners, namely that prisoners' heads rest against a bare metal bar during transport (paragraph 27);
- the Spanish authorities' attention is drawn to allegations made by several prisoners that handcuffs had been applied unduly tightly during their transport (paragraph 28).

requests for information

- for 1992 to 1994:
  - . the number of cases in which criminal proceedings have been instituted in relation to allegations of ill-treatment of detained persons by law enforcement officials;
  - . an account of judgments delivered by the courts in cases involving allegations of ill-treatment by law enforcement officials (i.e. brief description of the facts; verdict; if appropriate, sentence imposed) (paragraph 22);
- information on existing mechanisms at the administrative level for examining complaints about treatment whilst in the custody of law enforcement agencies, including full details of the guarantees ensuring the objectivity and independence of their investigations (paragraph 23);
- the views of the Spanish authorities on the possibility of applying to arrested persons a system comparable to that provided for prisoners in the Protocol on transfers of July 1994 (paragraph 26);
- the comments of the Spanish authorities on conditions of transport between the Canary Islands and mainland Spain (paragraph 27).

**2. Material conditions of detention**

recommendations

*as regards Civil Guard establishments*

- conditions of detention at the Outer Madrid Headquarters, the Headquarters in Madrid and La Salve Barracks in Bilbao to be reviewed in the light of the remarks set out in paragraphs 29 and 34 to 39 (paragraph 40).

*as regards National Police establishments*

- conditions of detention at the Police Headquarters and Area 1 District Police Station in Barcelona, and at the Central District Police Station (Calle de la Luna) and Parla Police Station in Madrid, to be reviewed in the light of the remarks set out in paragraphs 29, 44 and 45 (paragraph 47).

*as regards Basque Autonomous Police (Ertzaintza) establishments*

- the remarks in paragraph 50 to be taken into account when persons are detained at the Sestao and Tolosa stations, as well as in the operation of existing Ertzaintza establishments in general and in the construction of new ones (paragraph 51);
- appropriate steps to be taken in order to allow detained persons to comply with the needs of nature in private (paragraph 52).

*as regards other places of detention*

- the matters raised in the report on the 1991 visit regarding cellular accommodation at the Municipal Police Headquarters in Bilbao to be addressed without further delay (paragraph 53).

*of a general nature*

- arrangements for providing food to persons detained by the law enforcement agencies to be reviewed, in order to ensure that such persons receive food at appropriate times, including at least one full meal every day (paragraph 56);
- appropriate steps to be taken to ensure that the conditions of detention in the establishments of law enforcement agencies in general meet all the requirements indicated in paragraph 29 (paragraph 57).

comments

- a desirable objective, insofar as space is concerned, for individual cells used for overnight stays is in the order of 7 m<sup>2</sup>, 2 m or more between walls, 2.5 m between floor and ceiling (paragraph 51);
- all cells at the Audiencia Nacional should be equipped with a means of rest for persons detained (paragraph 54);
- it would be desirable to provide intoxicated persons taken into custody overnight at the Joint Municipal and National Police Station in Las Ramblas at Barcelona with a mattress (which could be disposable or equipped with a washable covering) (paragraph 55).

requests for information

- within three months, further information on progress made to implement the immediate recommendation made in respect of the El Antiguo detention facilities of the Guipúzcoa Headquarters of the Civil Guard at San Sebastián; more particularly, information on whether the cells at El Antiguo are still in service and, in the affirmative, on what improvements have been made to conditions within them (paragraph 33);
- within three months, further information on progress made towards the transfer of the Central Duty Inspection of the National Police in Madrid to other premises (paragraph 43);
- information on regulations or guidelines issued to municipal authorities concerning cellular accommodation and the facilities to be offered to persons detained (paragraph 53).

### **3. Safeguards against the ill-treatment of detained persons**

#### recommendations

- the period during which a detained person can be denied the communication provided for in Article 520(2)(d) of the Code of Criminal Procedure to be shortened substantially; a maximum period of 48 hours would strike a better balance between the requirements of investigations and the interests of detained persons (paragraph 60);
- the Spanish authorities to comply with the recommendation that persons detained by the law enforcement agencies be granted the right of access to a lawyer as from the outset of their detention - it being understood that in the case of a detainee held incommunicado, that lawyer may be officially appointed on his behalf; the right of access to a lawyer to include inter alia the right to contact and to be visited by the lawyer, in both cases under conditions guaranteeing the confidentiality of the detainee/lawyer discussions (paragraph 64);
- the Spanish authorities to comply with the recommendations that:
  - . all medical examinations of detainees be conducted out of the hearing, and preferably out of the sight, of police or Civil Guard officers;
  - . the results of all medical examinations as well as relevant statements by the detainee and the doctor's conclusions be formally recorded by the doctor and made available to the detainee (paragraph 65);
- detained persons who are not held incommunicado to be expressly informed of their right to be examined by a doctor of their own choice (paragraph 67);
- detainees held incommunicado to be expressly informed of the possibility open to them to be examined by a second doctor (paragraph 68);
- the Spanish authorities to comply with the recommendation that a code of practice for the conduct of interrogations by law enforcement officials be drawn up. Such a code to stress the total prohibition of the use of ill-treatment, and to deal inter alia with the following: the systematic informing of the detainee of the identity (name and/or number) of those present at the interrogation; the permissible length of an interrogation; rest periods between interrogations and breaks during an interrogation; places in which interrogations may take place; whether the detainee may be required to remain standing while being interrogated; the interrogation of persons who are under the influence of drugs, alcohol, medicine, or who are in a state of shock. Further, a record to be systematically kept of the time at which interrogations start and end, of the persons present during each interrogation and of any request made by the detainee during the interrogation. The position of specially vulnerable persons (for example, the young, those who are mentally disabled or mentally ill) to be the subject of specific safeguards (paragraph 70);



- the Spanish authorities to reconsider the CPT's recommendation concerning the possible introduction of a system of electronic recording of interrogations by law enforcement officials (paragraph 71);
- the Spanish authorities to develop a single and comprehensive custody record to be used by law enforcement agencies (paragraph 76).

#### comments

- although forensic doctors are employed by the State to carry out certain specific duties, as doctors they retain a basic duty of emergency care and advice to the persons they examine. Forensic doctors should be provided with all the means necessary to perform effectively this hybrid function (paragraph 66);
- judicial authorities and/or public prosecutors to be encouraged to exercise on the spot supervision of places of detention (paragraph 72);
- the relevant judicial authorities to be encouraged to have more frequent recourse to paragraph 3 of Article 520 bis of the Code of Criminal Procedure (paragraph 73);
- the Spanish authorities are invited to explore the possibility of attributing the responsibility for the custody of detainees to custody officers who are specifically selected and trained for that post (paragraph 77).

#### requests for information

- the comments of the Spanish authorities on the fact that law enforcement agencies systematically request that persons arrested in relation to terrorist activities be held incommunicado and that the competent judges systematically grant such requests (paragraph 62);
- the views of the Spanish authorities on the possibility of requiring that a decision ordering that a person be held incommunicado be reviewed at a specified moment (for example, when a request that the detainee's period of detention be extended is examined) (paragraph 62);
- the comments of the Spanish authorities on the suggestion that detained persons be systematically brought before the judge concerned prior to him taking a decision under Article 520 bis, paragraph 1, on the issue of extending the detention period beyond 72 hours (paragraph 74);
- clarification as to the period of time within which notification of an arrest must be given to the competent judicial authorities/public prosecutor (paragraph 75);
- information on the rights enjoyed by persons who are detained for the purposes of identification under Organic Law 1/1992 on the protection of people's security (paragraph 79).

## **B. Places of detention for foreigners**

### recommendations

#### *as regards the Detention Centre for foreigners at Moratalaz*

- the operation of the Moratalaz Centre to be reviewed without further delay, in the light of the recommendations and comments made in paragraphs 68 to 78 of the report on the first periodic visit (paragraph 82).

#### *as regards the Detention Centre for foreigners at Barcelona*

- account to be taken of the recommendations and comments made in the report on the first periodic visit concerning the selection of police officers for supervisory duties in detention centres, and the carrying of - and recourse to - truncheons (paragraph 84);
- not more than six detainees to be held in the cells measuring 16 m<sup>2</sup> (paragraph 85);
- steps to be taken immediately to ensure that persons held at the Centre are allowed access to an open air exercise area for at least one hour per day (paragraph 86);
- shortcomings in respect of recreational activities and the provision of information to be remedied (paragraph 87).

### comments

- it would be preferable that the cells having very limited access to natural light at the Detention Centre for foreigners at Barcelona not be used for detention purposes (paragraph 85);
- in addition to an open air exercise area, it would be very desirable for the holding facilities at Barajas Airport, Madrid to enjoy access to natural light (paragraph 92).

### requests for information

- information on the health-care service provided to persons detained in the Detention Centre for foreigners at Barcelona (paragraph 89);
- further information on improvements made to the transit holding facilities at Barajas Airport, Madrid (paragraph 92);
- full information on the alternative arrangements made for the accommodation of persons detained under the Aliens Law following the closure of the Tarifa Centre (paragraph 94);
- information on both the formal safeguards and practical arrangements which are applied in Spain in order to ensure that aliens are not sent to a country where they run a risk of being subjected to torture or to inhuman or degrading treatment or punishment (paragraph 95).

## **C. Prisons**

### **1. Torture and other forms of ill-treatment**

#### recommendations

- the remaining metal rings inserted in the concrete blocks which form the base of cell beds and tables at Madrid II Prison to be removed without further delay (paragraph 104);
- the Spanish authorities to comply with the recommendation that a central register be kept in each prison, containing full information on every instance of resort to means of coercion (paragraph 106).

#### comments

- the CPT trusts that "sprays having an adequate effect" will be definitively removed from the list of authorised means of coercion (paragraph 105).

#### requests for information

- a full account of complaints of ill-treatment made by prisoners in Madrid II Prison over the last two years and of action taken upon them (paragraph 104);
- information on the number of complaints of ill-treatment lodged in 1993 and 1994 against prison officers in Spain and on the number of disciplinary and/or criminal proceedings initiated during the same period in relation to allegations of ill-treatment by prison officers, together with an account of any sanctions imposed (paragraph 107).

### **2. Treatment of prisoners considered as "extremely dangerous" or as "unadapted to an ordinary prison regime"**

#### recommendations

- the recommendations made in paragraphs 113, 114 and 116 of the report on the first periodic visit to be fully taken into account in the course of the review currently taking place of the operation of the FIES-RE system (paragraph 112).

#### requests for information

- information on:
  - . the number of persons currently classified in each of the two phases of Grade 1/Article 10 (2);
  - . regarding each of the above groups of persons, the distribution between the five FIES categories (BA, RE, NA, FS and CE) and the number of those not included in the FIES;

regarding the Grade 1/Article 10(2) prisoners placed in the FIES-RE category, the length of time which each of those persons has been the subject of the combined application of the FIES-RE system and a Grade 1/Article 10(2) regime (paragraph 111);

- full details of the new measures adopted concerning the FIES system and Grade 1/Article 10(2) regime (paragraph 112).

### **3. Conditions of detention in the prisons visited**

#### recommendations

##### *as regards Modelo Prison*

- steps to be taken immediately to ensure that no more than three prisoners are held per cell (paragraph 131);
- serious efforts to be made to reduce as soon as possible the occupancy rate to two prisoners per cell (paragraph 131);
- immediate steps to be taken to improve the level of hygiene - and material conditions in general - in the establishment's kitchen (paragraph 131);
- a major renovation programme, involving every part of the establishment, to be drawn up and implemented without delay (paragraph 131).

##### *as regards Madrid I Prison*

- steps to be taken immediately to ensure that no more than three prisoners are held per standard cell, and no more than seven per double cell (paragraph 132);
- serious efforts to be made to reduce as soon as possible the occupancy rate of the standard cells to two prisoners per cell, and that of the double cells to five prisoners per cell (paragraph 132).

##### *as regards both prisons*

- the activity programmes offered in the Modelo and Madrid I Prisons to be reviewed; the objective should be to ensure that all prisoners are offered the possibility to spend a reasonable amount of time each day engaged in purposeful activities of a varied nature (group association activities, sport, work with vocational value, education etc.) (paragraph 133).

##### *as regards the Madrid Prison for Women*

- serious efforts to be made to reduce as soon as possible the occupancy rate in the cells in Modules 1 to 3 to one prisoner per cell (save for specific situations when it is not appropriate for a prisoner to be left alone), and in Module 4 to two prisoners per cell (paragraph 135);

- conditions in the prison's admissions unit to be reviewed in the light of the remarks made in paragraph 127 (paragraph 135);
- steps to be taken to ensure that mothers and their offspring are not obliged to share their cells with other inmates held in the mother/baby unit (paragraph 135).

*of a general nature*

- a very high priority to continue to be given to measures to reduce overcrowding in the Spanish prison system (paragraph 137);
- steps to be taken to remedy existing shortcomings in the booths used for ordinary visits from family members and friends at the Carabanchel Prison Complex and Modelo Prison, and also in the booths used for visits from lawyers at Madrid I Prison (paragraph 138).

comments

- all prisoners without exception, including newly-arrived prisoners and prisoners undergoing cellular confinement as a punishment, should be allowed to take at least one hour of exercise in the open air every day (paragraph 134);
- the Spanish authorities are once again invited to explore the possibility of having more open arrangements for ordinary visits (paragraph 139);
- the Spanish authorities are invited to improve conditions in the rooms used for special ("vis-à-vis") visits at Modelo Prison (paragraph 140).

requests for information

- the views of the Spanish authorities on the length of time during which a mother should be allowed to keep her child with her in prison (paragraph 136);
- up-to-date figures on the number of prisoners as compared to the number of prison places in the Spanish prison system (paragraph 137);
- further information on the issue of delays in the distribution of letters and other authorised objects sent to prisoners and on measures adopted or to be adopted providing for a quicker and more efficient procedure (paragraph 141);
- the comments of the Spanish authorities on the issue of prisoners serving their sentences in establishments situated a long way from their families' homes (paragraph 143).

#### 4. Health-care services

##### recommendations

###### *as regards the Modelo Prison Infirmary*

- steps to be taken to improve material conditions in the room set aside for psychiatric patients (paragraph 146);
- physical conditions in the common room of the psychiatric unit to be improved, inter alia by placing clear glass in the windows (paragraph 147);
- measures to be adopted, aimed at attaining an acceptable level of privacy for patients at the psychiatric unit (paragraph 147);
- night supervision to be improved at the psychiatric unit (paragraph 147).

###### *as regards Madrid I Prison Infirmary*

- the number of persons that can be accommodated in each dormitory to be reduced (paragraph 150);
- access to natural light and ventilation in the dormitories to be reviewed (in particular in Room 1) (paragraph 150).

###### *as regards the Madrid Prison for Women's Infirmary*

- health-care facilities at the Madrid Prison for Women to be reviewed in the light of the CPT's remarks (paragraph 153).

###### *as regards medical care provided to prisoners*

- the availability of specialist psychiatric ambulatory care to be augmented substantially at Madrid I Prison and the Madrid Prison for Women (paragraph 158);
- appropriate steps to be taken to ensure that mentally ill prisoners at the Madrid Prison for Women are hospitalised without delay (paragraph 159);
- steps to be taken without delay to provide curative treatment to prisoners; such treatment to be free of charge for those not in a position to pay for it (paragraph 160).

###### *as regards other matters*

- steps to be taken to ensure that any signs of violence observed when a prisoner is medically screened on his admission are fully recorded, together with any relevant statements by the prisoner and the doctor's conclusions; further, this information to be made available to the prisoner. The same approach to be followed whenever a prisoner is medically examined following a violent episode in the prison (paragraph 180).

comments

- the CPT trusts that account shall be taken of the remarks in paragraph 147, in the course of the refurbishment and operation of the new facilities for psychiatric use at the Modelo Prison infirmary (paragraph 147);
- the CPT trusts that steps have been taken to improve fire-escape arrangements for the upper floors of the Modelo Prison infirmary (paragraph 148);
- written information on relevant health issues should be systematically provided to prisoners (paragraph 155);
- the Spanish authorities are invited to take steps to ensure that adequate pre- and post- HIV test counselling is provided in all prisons (paragraph 163);
- the opening of a psychiatric section in the Penitentiary Unit at the Terrassa Hospital would only be satisfactory on condition that the section was provided with facilities for psychotherapeutic activities and open-air exercise (paragraph 171);
- all patients, however serious their condition may be, including those who are terminally ill, should be treated in a manner which respects human dignity (paragraph 176);
- given the risk run by a prisoner affected by the body-pack syndrome (namely perforation of the sachet, resulting in acute poisoning or intestinal obstruction), such prisoners should be placed under close medical supervision (paragraph 177).

requests for information

- information on further developments towards providing prisoners with the same level of health care as that provided to persons living in the community at large (paragraph 144);
- clarification as to whether newly arrived prisoners at Madrid I Prison are allowed a choice between HIV, hepatitis A, B and C, and syphilis tests or whether such tests are offered on an all-or-none basis (paragraph 156);
- information on the assessment of suicide risk on admission at Madrid I Prison (paragraph 156);
- confirmation that information on HIV serology is to be treated as medical information of a confidential nature, within the meaning of the instructions issued on this matter by the Director General of Prison Services on 17 March 1994 (paragraph 164);

- information on the arrangements made for female prisoners in Catalonia who require somatic care in a hospital (paragraph 168);
- information on progress made towards the provision of psychiatric care in each prison (paragraph 171);
- information on the arrangements made for patients from the Madrid Prison for Women who require psychiatric care in a hospital (paragraph 171);
- within three months, clarification of the current position regarding the psychiatric unit at the General Penitentiary Hospital, i.e. whether it has been closed and, if not, what improvements have been made to the regime applied in the unit (paragraph 175);
- the comments of the Spanish authorities on the allegedly unsatisfactory and inconsistent application of Article 60 (2) of the Prison Rules (paragraph 178);
- further information from the Spanish authorities concerning their current approaches and future plans as regards the treatment of prisoners suffering from acute withdrawal symptoms and the provision of long-term treatment for prisoners with drug/alcohol dependencies (paragraph 179).

## **5. Other issues**

### recommendations

- a general review to be carried out of staffing levels in Spanish prisons, in order to ascertain whether they are adequate in the light of current and envisaged prison population levels (paragraph 181);
- prison officers who work in establishments that accommodate a large number of foreign prisoners to be given special training (paragraph 182);
- supervisory judges to visit each establishment under their responsibility at least once a week, irrespective of whether any prisoners have requested to see the judge; in the course of this weekly visit, the supervisory judge to view the whole of the prison premises and enter into direct contact with both prisoners and prison staff (paragraph 185).

### requests for information

- information on the length and content of training provided to prison officers in the Catalan Prison Service (paragraph 182);
- the comments of the Spanish authorities on the desirability of appropriate measures to encourage prison officers with a university education to pursue long-term careers in the prison service (paragraph 183).



#### **D. Detention Centres for Minors**

##### recommendations

- the paint on the glass windows in the girls' rooms at El Madroño to be removed (paragraph 190);
- the minors' rooms at Renasco to be equipped with a call bell (paragraph 194);
- appropriate measures to be taken to ensure that minors held at the Renasco Centre have ready access to a proper toilet facility at all times (paragraph 194);
- as regards the disciplinary procedure
  - . a minor to be guaranteed a right to be heard on the subject of the offence it is alleged he/she has committed;
  - . a right of appeal to a higher authority against sanctions imposed (i.e. to the Director of the Centre, as regards sanctions imposed by educators, and to the competent judge as regards sanctions imposed by the Director) to be formally recognised;
  - . a register to be kept in each Centre, containing full details of all disciplinary sanctions imposed (paragraph 197);
- the underlying motives for every instance of self-injury to be examined by a competent member of the medical staff before that conduct is sanctioned as a breach of discipline (paragraph 198);
- appropriate measures to be taken to ensure that the results of HIV tests are protected by strict medical confidentiality (paragraph 200).

##### comments

- the Spanish authorities are invited to improve the standard of equipment in the boys' rooms at the Renasco Centre and to explore the possibility of locating the girls' rooms in another part of the building (paragraph 193);
- the importance of adequate counselling both before and - if appropriate - after an HIV test is stressed (paragraph 200).

##### requests for information

- further information on specialist medical care provided to minors held at the El Madroño and Renasco Centres, particularly as regards dental and psychiatric care (paragraph 199).

**E. Psychiatric Institutions**

recommendations

- a detailed medical policy on recourse to instruments of physical restraint to be laid down dealing in particular with: the types of cases in which application of such instruments is permissible; their duration and frequent review; the provision of appropriate human contact; and the staff's duty of increased attention (paragraph 204);
- instruments of physical restraint to be applied only on the express instructions of a doctor or immediately brought to the attention of a doctor for approval (paragraph 204);
- every use of such instruments to be recorded in the patient's file and in an appropriate register, with an indication of the times at which the measure began and ended, the circumstances of the case and the reasons for resorting to the measure (paragraph 204).

requests for information

- information on any specific training received by law enforcement officials in the handling of mentally disturbed persons (paragraph 205).

## **APPENDIX II**

### **LIST OF THE NATIONAL AUTHORITIES AND NON-GOVERNMENTAL ORGANISATIONS WITH WHICH THE DELEGATION HELD CONSULTATIONS**

#### **National Authorities**

##### **Ministry of Justice**

- Mr Juan Alberto BELLOCH JULBE, Minister for Justice
- Mrs Margarita ROBLES, Secretary General of the Ministry of Justice
- Mr Juan Luis IBARRA ROBLES, Technical Secretary General of the Ministry of Justice
- Mr David BELTRAN CATALA, Director General of Prison Services
- Dr Julián ESPINOSA IBORRA, Health Advisor to the Secretariat of Prison Services
- Mr Francisco Javier BORREGO BORREGO, State Advocate, Head of the Legal Service and responsible for relations with the European Commission and European Court of Human Rights

##### **Ministry of the Interior**

- Mr Antoni ASUNCION HERNANDEZ, Minister for the Interior
- Mr Ricardo BLANCO CANALES, Head of the Private Office of the Ministry of the Interior
- Mr Fernando PUIG DE LA BELLACASA, Under-Secretary for the Interior

##### **Ministry of Foreign Affairs**

- Mr Máximo CAJAL LOPEZ, Under-Secretary for Foreign Affairs

##### **Ministry of Health**

- Mrs María de los Angeles AMADOR MILLAN, Minister for Health
- Mr José María ROCHE MARQUEZ, Technical Secretary General of the Ministry of Health
- Mr José Luis TEMES, Chairman of the Insalud (Institute of Health)
- Dr María de los Angeles GRANADOS POVEDA, Advisor to the Under-Secretary for Health

Other national authorities

- Mr Eligio HERNANDEZ GUTIERREZ, State Public Prosecutor
- Mrs Margarita RETUERTO BUADES, Acting Ombudsman
- Mr Antonio ROVIRA VIÑAS, Second Deputy to the Ombudsman
- Mr FERNANDEZ, Office of the Ombudsman
- Mrs HUET, Office of the Ombudsman
- Mr Clemente AUGER, President of the Audiencia Nacional
- Mr Carlos DIVAR, Dean of the judges in charge of the Central Examining Courts

The delegation also met a number of other judges and forensic doctors attached to various courts.

Authorities of the Autonomous Communities

- Mr Juan María ATUTXA MENDIOLA, Counsellor for the Interior of the Basque Government
- Mr José Luis AURTENETXE GOIRIENA, Head of Legal Affairs of the Department of the Interior of the Basque Government
- Mr Juan Antonio RUBALCABA QUINTANA, Chairman of the Human Rights Commission of the Basque Parliament
- Mr Faustino LOPEZ DE FORONDA, Ararteko (the Basque Ombudsman)
- Mr Antoni ISAC I AGUILAR, Counsellor for Justice of the Catalan Government
- Mr Xavier TRIAS I VIDAL DE LLOBATERA, Counsellor for Health of the Catalan Government
- Mr Ignasi GARCIA I CLAVEL, Director General of Prison and Rehabilitation Services of the Department of Justice of the Catalan Government
- Mr Anton CANYELLAS, Sindic de Greuges (the Catalan Ombudsman)

**Non-governmental organisations**

- ACAT (Christians against Torture)
- ACOPE (Women Prisoners Support Group)
- ACT (Association against Torture)
- APDHE (Spanish Association in favour of human rights)
- Prisons Group of the Culture Commission, Barcelona Colegio de Abogados
- SAC (Union of Civil Servants of the Catalan Government)
- Salhaketa
- Senideak