



CPT/Inf (2011) 11

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 19 September to 1 October 2007

The Spanish Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2011) 12.

Strasbourg, 25 March 2011

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Copy of the letter transmitting the CPT's report

Ms. María Ángeles GONZÁLEZ GARCÍA
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Ministry of the Interior
Amador de Los Ríos No. 5
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Strasbourg, 25 March 2008

Dear Madam,

In pursuance of Article 10, paragraph 1, of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment, I enclose herewith the report to the Government of Spain drawn up by the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) following its visit to Spain from 19 September to 1 October 2007. The report was adopted by the CPT at its 65th meeting, held from 3 to 7 March 2008.

The various recommendations, comments and requests for information formulated by the CPT are listed in Appendix I. As regards more particularly the CPT's recommendations, having regard to Article 10 of the Convention, the Committee requests the Spanish authorities to provide **within six months** a response giving a full account of action taken to implement them.

The CPT trusts that it will also be possible for the Spanish authorities to provide, in the above-mentioned response, reactions to the comments formulated in this report which are summarised in Appendix I as well as replies to the requests for information made.

The CPT would ask, in the event of the responses being forwarded in the Spanish language, that they be accompanied by an English or French translation. It would be most helpful if the Spanish authorities could provide a copy of the responses in a computer-readable form.

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

Yours faithfully,

Mauro PALMA
President of the European Committee for the
prevention of torture and inhuman
or degrading treatment or punishment

cc. Ms Marta VILARDELL COMA, Ambassador Extraordinary and Plenipotentiary,
Permanent Representative of Spain to the Council of Europe

I. INTRODUCTION

A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment (hereinafter referred to as "the Convention"), a delegation of the CPT carried out a visit to Spain from 19 September to 1 October 2007. The visit was organised within the framework of the CPT's programme of periodic visits for 2007; it was the Committee's 11th visit to Spain, and the 5th of a periodic nature¹.

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

- Mauro PALMA, President of the CPT (Head of delegation)
- Silvia CASALE
- Celso DAS NEVES MANATA
- Marija DEFINIS GOJANOVIĆ
- Vladimir ORTAKOV.

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

- Hugh CHETWYND (Head of Division)
- Kristian BARTHOLIN
- Caterina BOLOGNESE

and assisted by

- Mark KELLY, lawyer, Director of the Irish Council for Civil Liberties, Ireland (expert)
- Rolf TEMPERLI, Medical Doctor, Switzerland (expert)
- Beth GELB, Interpreter
- Danielle GREE, Interpreter
- Claude LORD, Interpreter
- John MATTHEWS, Interpreter
- Felix ORDEIG, Interpreter.

¹ The first four having taken place in April 1991, April 1994, November/December 1998 and July/August 2003. The six ad hoc visits to Spain were carried out in June 1994, January 1997, April 1997, July 2001, December 2005 and January 2007.

B. Establishments visited

3. The delegation visited the following establishments:

Ministry of Interior of Spain

National Police

Basque Country

- San Sebastian Provincial Headquarters

Canary Islands

- St. Cruz de Tenerife Provincial Headquarters, Tenerife
- Playa de las Américas Police Station, Tenerife

Catalonia

- Barcelona District Headquarters
- Grannollers Police Station
- St. Feliu de Llobregat Police Station

Madrid area

- Arganzuela Police Station
- Offices of the Provincial Brigade of the Judicial Police (BPPJ), Headquarters of the National Police
- Central Registry of detained persons, Moratalaz
- Moratalaz Police Station
- Tetuan Police Station
- Puente de Vallecas Police Station
- Villa de Vallecas Police Station
- Barajas Airport Police Station
- Barajas Airport Immigration Service and waiting area

Guardia Civil

Basque Country

- Vizcaya District Headquarters, Bilbao
- Baracaldo Station, Bilbao
- Northern Terrorism Unit of the Information Service and detention cells, Gipuzkoa District Headquarters, Intxaurrenondo, San Sebastian
- Alava District Headquarters, Vitoria

Madrid area

- Detention Unit of the Central Section of the Information Service, Calle Guzman el Bueno

Prison establishments

- Madrid V Prison (Soto del Real) (Module 15)
- Nanclares de la Oca Prison, Basque Country (special departments)
- San Sebastian Prison (Martutene), Basque Country

In addition, Madrid Prisons I (Alcalá-Meco - women), II (Alcalá-Meco - men) and III (Valdemoro) were visited for the purpose of interviewing certain prisoners.

Autonomous Regional Government of Catalonia (Generalitat de Catalunya)

Department of Justice

- Barcelona Prison for men (“la Modelo”), (Galleries 1 and 6)
- Brians 1 Prison
- Girona Prison (women’s and segregation units)
- Quatre Camins Prison

Department of the Interior

Catalan Autonomous Police (Mossos d’Esquadra)

- “Les Corts” District Station, Barcelona
- Mossos d’Esquadra Station at metro station «Catalunya», Barcelona
- Grannollers District Station
- Girona District Station
- l’Hospitalet District Station

Catalan local police

- Grannollers Local Police Station
- St Feliu de Llobregat Local Police Station

Autonomous Regional Government of the Basque Country (Eusko Jaurlaritza)

Basque Autonomous Police (Ertzaintza)

- Ertzaintza Station in Bilbao
- Ertzaintza Station in Vitoria
- Gipuzkoa District Information and Analysis Service, Oiartzun

Autonomous Regional Government of the Canary Islands (Gobierno de Canarias)

- Emergency Facility for Unaccompanied Foreign Minors in the Canary Islands (DEAMENAC La Esperanza - Hogar I and II Schools), La Esperanza, Tenerife

C. Consultations held by the delegation

4. In the course of the visit, the CPT's delegation held consultations, at the central level, with the Minister of the Interior, Mr Alfredo PEREZ RUBALCABA and the Secretary of State for Security, Mr Antonio CAMACHO VIZCAINO, as well as with the President of the Audiencia Nacional, Mr Carlos DIVAR BLANCO, the Prosecutor-General, Mr Cándido CONDE-PUMPIDO TOURON, and the Director-General of Penitentiary Institutions, Ms Mercedes GALLIZO LLAMAS. It also met with representatives of the General Council of the Judiciary of Spain.

In Catalonia, the delegation met with representatives of the Generalitat de Catalunya, notably the Secretary for the Penitentiary Service, Mr Albert BATTLE I BASTARDAS, and the Secretary of Security, Mr Joan DELORT I MENAL. In the Basque Country, it met with the Secretary for the Interior of the Eusko Jaurlaritza, Mr Javier BALZA AGUILERA.

The delegation also met the Catalan Ombudsman, Mr Rafael RIBO I MASSO, and the Ombudsman for the Basque Country, Mr Iñigo LAMARCA ITURBE. Further, it held discussions with representatives of non-governmental organisations active in areas of concern to the CPT.

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

D. Cooperation between the CPT and the authorities of Spain

5. The delegation received very good cooperation during the visit. It had unlimited access to all places it wished to visit, was able to meet those persons with whom it wanted to speak in private and was provided with access to most of the information it required. In this respect, it would like to express its appreciation to the team of liaison officers who assisted the delegation prior to and during the visit.

However, one exception to the otherwise very good cooperation concerned access to individual medical files in Catalonia.

6. It should first be recalled that Article 8, paragraph 2 (d), of the Convention obliges Parties to provide the Committee with "information available to [them] which is necessary for the Committee to carry out its task." This certainly includes access to medical records of detained persons; such information can, for a variety of reasons, be of great relevance to the Committee's task of examining the treatment of persons deprived of their liberty. For instance, medical records can be instructive as a point of comparison with information gathered elsewhere (e.g. via direct medical observations, or from verbal accounts given by a particular detainee or other person) on specific subjects - the occurrence of physical ill-treatment in a given case, the psychological effects of a regime on a given prisoner, etc. More generally, an examination of medical records enables visiting delegations to assess in a thorough manner the organisation of the health care service in a particular establishment of deprivation of liberty (including, inter alia, psychiatric establishments).

When seeking such information, the CPT must have regard to rules of national law² and professional ethics. This may well have implications as regards the precise manner in which the information sought is provided to the Committee; however, nothing can justify a refusal to grant access to the information requested, or the granting of access under conditions which would be tantamount to a refusal.

7. In the past, CPT delegations carrying out visits to Spain have always been granted access to medical records of persons deprived of their liberty. Indeed, in the course of the 2007 periodic visit, the CPT's delegation was provided with access to medical records in all establishments visited outside of Catalonia. Moreover, access to medical records was granted at Brians I Prison, the first prison visited in Catalonia. However, at Quatre Camins Prison access to medical files was denied. The objections to granting access to medical files to the CPT's doctor gradually evolved with time until the requirement was that each prisoner should provide written authorisation for their files to be consulted; further, access to the medical files would be conducted under the direct supervision of the manager of the health-care service at Quatre Camins Prison. Such a cumbersome and restricted approach is not acceptable to the CPT. After a day and a half of efforts to resolve the problem the delegation interrupted its visit to this establishment.

The CPT recommends that the Spanish authorities take appropriate steps to ensure that, in the future, effective access to medical files is guaranteed in all establishments that the Committee visits, as required by Article 8, paragraph 2 (d), of the Convention.

8. The principle of co-operation set out in Article 3 of the Convention also requires that decisive action be taken, including at the highest political level, with a view to improving the situation in the light of the Committee's key recommendations. In this respect, one of the CPT's longstanding key recommendations which has yet to be implemented by the Spanish authorities concerns the right of prompt and effective access to a lawyer from the very outset of deprivation of liberty by law enforcement agencies.

The lack of action on the part of the Spanish authorities on this matter prompted the CPT to carry out an ad hoc visit to Spain in December 2005. Regrettably, the apparently forward-looking discussions held with the authorities in the course of that visit³ were not followed up with any concrete action, and the written response to the CPT's report on the visit once again stated that the existing system provided adequate safeguards⁴. This matter will be addressed in detail later in the report.

² Reference might also be made to Section II, Article 7c, of European Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

³ See CPT/Inf (2007) 30, paragraph 7.

⁴ See CPT/Inf (2007) 31, pages 8 to 10 and page 35.

9. The CPT must stress that, after 11 visits, the persistent non-implementation of certain of its recommendations by the Spanish authorities will leave the Committee with no choice but to consider having recourse to the procedure provided for in Article 10, paragraph 2, of the Convention⁵. The Committee trusts that the action taken in the light of this report will render such a step unnecessary. In particular, it will be scrutinising the action taken as regards the safeguards surrounding incommunicado detention, access to a lawyer as from the outset of police custody and the conditions of detention in certain excessively overcrowded prisons.

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

10. At the meeting which took place at the end of the visit, on 1 October 2007, the CPT's delegation made three immediate observations under Article 8, paragraph 5, of the Convention as regards cells in a particular police station, the use of fixation in prisons in Catalonia and the recording of each stage of detention by the Guardia Civil. The Spanish authorities were requested to provide the CPT, respectively, with:

- by 31 October 2007, confirmation that the cells visited at Puente de Vallecas National Police Station in Madrid have been taken out of service;
- by 31 October 2007, confirmation that a review of the current practice of fixation in prisons in Catalonia has been initiated, and that inmates are no longer fixated in positions that cause pain and that metal handcuffs have been replaced with specially designed straps;
- by 15 November 2007, confirmation that the necessary measures have been taken to guarantee the recording of each stage of detention (incommunicado and ordinary), including the identity of police officers and the precise location of the detained person, by the Guardia Civil.

11. By letter of 7 November 2007, the Spanish authorities responded to the immediate observations raised by the delegation. These responses have been taken into account in the relevant sections of the present report.

⁵ Article 10, paragraph 2, reads as follows: "If the Party fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after the Party has had an opportunity to make known its views, by a majority of two-thirds of its members to make a public statement on the matter".

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Law enforcement agencies

1. Preliminary remarks

12. In the course of the 5th periodic visit, the CPT's delegation revisited certain law enforcement establishments and carried out first-time visits to a number of other National Police and Civil Guard facilities, including Barajas International Airport facility for immigration detainees.

Further, the delegation visited five establishments of the Catalan Autonomous Police (Mossos d'Esquadra), an agency under the authority of the Catalan Autonomous Government which has progressively taken over all policing matters in Catalonia, apart from border controls, immigration and counter-terrorism. The delegation also visited several establishments of the Basque Autonomous Police (Ertzaintza) which fall under the authority of the Autonomous Regional Government of the Basque Country. Municipal police establishments in Catalonia, under the responsibility of the local authority, were also visited.

Particular attention was paid during the visit to the application of the system of incommunicado detention, in respect of several recent cases.

13. Despite amendments to the legislation⁶, the fundamental legal framework governing deprivation of liberty by law enforcement agencies has not evolved since the CPT's first visit to Spain in 1991⁷. Criminal suspects may be held in custody by such agencies for up to 72 hours, and this custody may be extended by judicial decision for a further 48 hours⁸ in respect of offences referred to in Article 384 bis of the Code of Criminal Procedure (CCP), i.e. "membership or relationship with armed groups or terrorist or rebellious individuals".

On 14 September 2007 new *Instructions on the behaviour required of security forces in order to safeguard the rights of persons arrested or in police custody*⁹ were issued by the Secretary of State for Security to the National Police and the Civil Guard.

⁶ See Organic Law 13/2003 of 24 October amending the Code of Criminal Procedure in the area of pre-trial detention.

⁷ See CPT/Inf (96) 9, Part I, Appendix II.

⁸ See Spanish Constitution, Articles 17 (2) and 55 (2), and Code of Criminal Procedure, Articles 520 and 520 bis.

⁹ *Instrucción 12/2007 (del 14 de septiembre 2007) de la Secretaria de Estado de Seguridad sobre los Comportamientos Exigidos a los Miembros de las Fuerzas y Cuerpos de Seguridad del Estado para Garantizar los Derechos de las Personas Detenidas o bajo Custodia Policial.*

2. Torture and other forms of ill-treatment

14. The delegation received a number of allegations of ill-treatment concerning, in particular, the National Police (notably, the BPPJ¹⁰) and the Madrid Municipal Police. The ill-treatment alleged consisted mainly of kicks and punches to the head and body and blows with truncheons to the body, after the persons concerned had been brought under control. The delegation also received detailed allegations of near-suffocation caused by a plastic bag placed over the head, of assault of a sexual nature, and of other forms of ill-treatment in respect of certain operations carried out by the Civil Guard on 28 March and 1 April 2007 .

15. In a number of cases, such as those described below, the delegation gathered medical and other evidence consistent with allegations of ill-treatment.

One person alleged that he was struck from behind, without warning, by a number of officers from the BPPJ in Madrid, and that he continued to receive blows from truncheons, kicks and fists for several minutes afterwards. He was taken to Tetuan National Police Station in Madrid and, six hours later, transported to La Paz Hospital to receive treatment for the injuries sustained to his face, back and other parts of his body. The injuries were again noted upon his admission to Madrid V Prison, on 31 August 2007, and described in the medical report (“*parte de asistencia por lesiones*”). Further, the photograph taken upon admission to the prison clearly shows a large abrasion to the right cheek. The allegations of ill-treatment are consistent with the medical evidence and with other documentation examined by the delegation.

Another person alleged that, at the time of his arrest by a plainclothes police officer from the “Grupo XVI” of the BPPJ in San Sebastian, he was punched on the left side of the chin, which resulted in a bruise. Upon admission to prison on 20 September 2007, the prison doctor recorded a traumatism to the chin, local inflammation and pain. The injury observed was consistent with the allegation.

16. The delegation also met 8 of the 11 persons (9 men and 2 women) arrested and detained incommunicado in a series of operations carried out by the Civil Guard on 28 March and 1 April 2007 in the Basque Country and Navarre. All those interviewed described a similar pattern of arrest and transfer to Madrid for incommunicado detention of 3 to 5 days, physical and verbal ill-treatment and intensive questioning.

One of the persons interviewed alleged that he was repeatedly hit on the body with batons at the time of his arrest on 1 April 2007 in Renteria (Basque Country) by some twelve Civil Guard officers. He was then apparently hooded, handcuffed in the back and transported over several hours to various locations, and eventually to Civil Guard premises in Intxaurreondo (San Sebastian), where he was kept handcuffed in a cell, pending his transfer to the Civil Guard detention unit at Calle Guzman el Bueno. He alleged that, in the course of interrogations over the following days, he was hooded at all times, had a plastic bag placed over his head until he felt he was suffocating on several occasions, was threatened with violence to his family, was forced to do push-ups and, afterwards, was hit on the sides and in the groin while covered in a blanket. He further alleged that, on one occasion, a stick was inserted in his anus.

¹⁰ Provincial Brigade of the Judicial Police (BPPJ) of the National Police.

The detained person gave a brief account of the allegations described above before the competent investigating judge of the Audiencia Nacional, who ordered remand in custody. The medical examination upon entry at Soto del Real Prison on 4 April 2007 noted “injuries at the time of arrest”: erosion of the right elbow, a haematoma (15 cm x 20 cm) on the left flank and erosion of the dorsal part of the left hand¹¹.

17. The CPT would also note that, since the visit, it has continued to receive news of alleged ill-treatment during incommunicado detention by the Guardia Civil. As regards, in particular, the cases of A.* and B.*, arrested on 6 January 2008, the CPT understands that criminal proceedings have been initiated. **The Committee would like to receive information concerning the outcome of those proceedings.**

18. As concerns the Mossos d’Esquadra, the delegation met several foreign nationals who alleged that they had been insulted and verbally abused by arresting officers, and one man alleged that, on 21 September 2007, he had received blows from truncheons to the head, body and legs while lying on the ground after having been brought under control. Upon examination by a medical member of the delegation he displayed a swelling of the fronto-parietal region of the head and tram-line reddish-blue bruises (10 cm x 2 cm) on his back, upper left arm, right fore-leg and outer side of the left knee. The injuries were consistent with his allegations.

19. Prior to the visit, the CPT learned of two incidents, in March and April 2007 respectively, in which Mossos d’Esquadra officers assaulted foreign nationals detained in “Les Corts” District Police Station. The incidents were clearly recorded on CCTV, covertly installed by the Catalan authorities in response to earlier allegations of ill-treatment by the police in that station. The authorities were swift to suspend the six police officers involved in these incidents pending a criminal investigation. However, on 16 January 2008, five of them were apparently reinstated in their duties, although the case had still not gone to court. In the opinion of the CPT, the reinstatement of law enforcement officials against whom there is a prima facie case of ill-treatment will send the wrong message about the commitment of the authorities to combating impunity. **The Committee would like to receive the comments of the authorities on this matter.**

20. The information gathered in the course of the 2007 visit concerning ill-treatment highlights the necessity for continued, determined, action by the authorities to address the situation. **The CPT calls upon the Spanish authorities to ensure that a message of zero tolerance of ill-treatment of detained persons reaches all law enforcement officials at all levels and to reinforce that message with a statement at the appropriate political level.**

Of course law enforcement officials should also be made aware, through concrete action, that the government is resolved to stamp out ill-treatment of persons deprived of their liberty. The rule of law entails not only the adoption of the appropriate legal norms and of appropriate messages, but also taking the necessary steps to ensure their application in practice.

¹¹ It should also be noted that prior to being brought to Intxaurreondo Civil Guard premises he was taken to hospital for treatment for an injury to his middle finger, which had been cut accidentally by officers trying to remove his handcuffs with a saw.

* In accordance with Article 11, paragraph 3, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, certain names have been deleted.

21. One example of concrete action is to take vigorous measures against law enforcement officials who commit acts of ill-treatment. When officials who order, authorise, condone or perpetrate torture and other ill-treatment are brought to justice for their acts or omissions, an unequivocal message is delivered that such conduct will not be tolerated. Apart from its considerable deterrent value, this message will reassure the general public that no one is above the law, not even those responsible for upholding it. The knowledge that those responsible for ill-treatment have been brought to justice will also have a beneficial effect for the victims.

22. Moreover, the CPT noted that, although each of the persons interviewed from the group of persons referred to at paragraph 16 alleged ill-treatment at the hearing before the Audiencia Nacional to decide on their remand in custody, investigations were only initiated in two cases, following the separate filing of complaints before ordinary courts. **The CPT recommends that the allegations in the remainder of the cases be duly investigated; it would like to be informed of the outcome of the proceedings.**

23. As stressed in previous reports, prosecutors and judges are under a duty to take appropriate action when there are indications that ill-treatment by the police may have occurred.

The CPT recommends, once again, that whenever persons brought before a prosecutor or judge allege ill-treatment by law enforcement officials, the prosecutor/judge record the allegations in writing, order immediately a forensic medical examination (for cases where a forensic examination is not automatically provided) and take the necessary steps to ensure that the allegations are properly investigated. Such an approach should be followed whether or not the person concerned bears visible external injuries. Further, even in the absence of an express allegation of ill-treatment, the prosecutor/judge should request a forensic medical examination whenever there are other grounds to believe that a person brought before him could have been the victim of ill-treatment. If necessary, the relevant legislation should be amended accordingly.

3. Incommunicado detention

a. introduction

24. In the course of the visit, the CPT's delegation reviewed the treatment of persons detained by law enforcement authorities to whom the incommunicado detention regime is applied, including the safeguards offered to such persons. For this purpose, it examined Civil Guard operations of 28 March and 1 April 2007, involving the arrest and detention of 11 persons.

The delegation interviewed 8 of the persons concerned and was granted access to extensive Civil Guard and Audiencia Nacional documentation relating to the detentions. Further, it held discussions with Civil Guard officials directly involved in those operations.

25. The incommunicado detention regime has been described and commented upon in earlier reports¹². It might usefully be recalled that the law enforcement agencies can request a judicial order from the Audiencia Nacional that a detained person be held incommunicado. The incommunicado regime applies as soon as it is requested, and the judge must respond within 24 hours. Incommunicado status may be imposed for the entire maximum period of police custody, i.e. five days. It may also be imposed at any time during remand custody in prison for five days, which may, in turn, be extended by three further days.¹³ Where the incommunicado regime is imposed during both police custody and remand, uninterrupted, the maximum period during which persons may be held in secret is 13 days.

For so long as persons remain incommunicado, they do not enjoy the right to have the fact and place of their detention notified to a person of their choice, to appoint their own lawyer to be present at formal statements before the police or the court, or to meet in private with the duty lawyer appointed to assist them, even after the formal statement has been made.

26. Reference should also be made to the following recent development concerning the safeguards applicable during the incommunicado regime.

Two investigating judges of the Audiencia Nacional have, on a number of occasions since 2006¹⁴, ordered the following specific safeguards to apply to incommunicado detentions, as from the moment they are authorised, namely:

- a) 24-hour video surveillance recording of the detained person;
- b) the possibility for daily visits from the personal doctor, together with the doctor in the service of the Audiencia Nacional; and
- c) the obligation for the family of the detained person to be notified, by a law enforcement official, of the person's detention and whereabouts.

It should be noted, however, that these measures are not binding on other judges of the Audiencia Nacional. Indeed, they were not applied in the context of the above-mentioned detentions in March and April 2007, which were all handled by a different judge of the Audiencia Nacional.

b. notification of custody

27. As already indicated in paragraph 13, persons suspected of offences referred to in CCP Article 384 bis may be detained by law enforcement agencies for up to 5 days. In practice, judicial orders authorising incommunicado detention during police custody are issued systematically for this maximum duration.

¹² See, in particular, the CPT reports on the visits in April 1991, January 1997, and July 2001.

¹³ See Organic Law 13/2003 of 24 October, and CCP Articles 509 and 510. It should be noted that incommunicado detention may be imposed during remand custody also for offences committed in an organised way by two or more persons.

¹⁴ See, for example, Audiencia Nacional Central Court of Instruction No. 5, Decision of 12 December 2006 in the cases of Urko Arroyo et al; and Central Court of Instruction No. 1, Decision of 19 February 2008 in the cases of Azaitz Garcia Solozabal et al.

Prompt notification of custody to a person of one's choice is an essential safeguard against ill-treatment. In previous reports¹⁵ the CPT has emphasised that, notwithstanding the legitimate interests of an investigation, it is unjustifiable to detain a person for up to five days (let alone 13) in secret as far as family and friends are concerned. Further, the measures mentioned at paragraph 26 would appear to suggest that, at least in the view of two judges at the Audiencia Nacional, it would not always be necessary for notification of custody to be delayed.

The CPT recommends that the Spanish authorities review the current legislation, in order to ensure that a person placed in incommunicado detention has the right to have a person of his choice informed of his detention and whereabouts at the earliest possible moment, and in no case later than 48 hours after the moment when he was first deprived of liberty.

c. access to a lawyer

28. The right of access to a lawyer as from the outset of custody is a fundamental safeguard against ill-treatment. The possibility for persons to have rapid access to a lawyer will have a dissuasive effect upon those minded to ill-treat detained persons; further, a lawyer is well placed to take appropriate action if ill-treatment actually occurs.

The incommunicado system does not allow the detained person to have access to a lawyer of his or her own choice. The CPT is aware that the legitimate interests of the police investigation may, exceptionally, justify a delay, for a certain period, of a detained person's access to a lawyer of his choice. In the Spanish incommunicado detention regime, however, the evaluation of the potential risk posed by contact with a particular lawyer has been short-circuited. A duty lawyer is automatically appointed officially.

Moreover, the duty lawyer's role is limited to being *present* when the detained person gives his first formal statement to the police, which may occur after several days have elapsed, and during subsequent statements. The effect of the incommunicado status therefore extends to communications with the duty lawyer. Indeed persons may only discuss in private with a lawyer once their incommunicado status is lifted by the Audiencia Nacional.

In the CPT's view there can be no reasonable justification for not allowing a person to speak with a duty lawyer in private, as from the outset of police custody and thereafter as required, including prior to the hearing at the Audiencia Nacional. **The CPT recommends that the Spanish authorities take the necessary steps to ensure that persons detained incommunicado are allowed to meet a lawyer in private, from the outset of their detention.**

¹⁵ See CPT/Inf (1996) 10, paragraphs 45 to 47 and CPT/Inf (2000) 6, paragraphs 22 to 23.

d. access to a doctor

29. Persons detained under the incommunicado regime are regularly visited by a forensic doctor attached to the competent court; in such an isolated context, to receive regular visits from any person - let alone a doctor - external to the law enforcement agencies is potentially a very important safeguard against ill-treatment.

30. Nevertheless, the effectiveness of this safeguard can be undermined by a number of factors, such as the circumstances in which consultations take place. Indeed, several of the detained persons interviewed alleged that the privacy of consultations was not respected.

31. Another concern pertains to the doctor's possible or perceived bias in favour of the law enforcement agencies. Some of the persons met expressed doubts regarding the professional independence of the doctor and stated that they had refused to be medically examined due to those concerns. The CPT notes that the forensic doctor visits the detained person, usually twice a day, throughout the period of incommunicado detention upon the instructions of the Audiencia Nacional as a protective measure against ill-treatment, reporting regularly to the competent investigating judge. Towards the end of the period, this very same court-appointed forensic doctor also declares the detained person "fit to provide a statement" ("*reuniendo condiciones para prestar declaración*") to the police. Thus the same doctor performs potentially conflicting roles.

32. Further, the forensic doctor's reports must be accurate and comprehensive. The court statements on the medical examinations of the persons interviewed show that on numerous occasions allegations of ill-treatment were recorded. However, the forensic doctors' statements indicated at times that no marks consistent with those allegations were observed. This latter point appears subsequently to have been considered by the competent judicial authorities as establishing that the persons concerned were not ill-treated (see also paragraph 33 below).

The CPT must reiterate¹⁶ that, in the light of the particular forms of ill-treatment alleged (see paragraphs 16 and 37), the absence of any "signs of violence" cannot be considered as conclusive. It would appear that, in certain statements by forensic doctors to the Audiencia Nacional regarding detentions during which the detained person was allegedly tortured by near-asphyxiation with a plastic bag, the suggestion is made that physical signs of asphyxiation should have been visible, yet they were not. It is widely accepted, on the contrary, that no physical findings are to be expected from asphyxiation using a plastic bag; further, blows to the body may only leave slight marks difficult to observe and which quickly disappear, especially if the blows are inflicted with an open hand or with an object that diffuses the impact of the blow.

¹⁶ See the report on the CPT's visit to Spain in January 1997 (CPT/Inf (2000) 3), at paragraph 44, subparagraph 2.

33. In order for the safeguard of the doctor to be effective, findings or indications of allegations must be followed up with appropriate action. Consequently, when allegations of certain forms of ill-treatment come to their notice (as those mentioned in paragraphs 16 and 37), public prosecutors and judges should not treat the absence of marks or conditions consistent with those allegations as in itself proving that they are false.

The forensic medical reports concerning the detentions in March-April 2007 contain numerous elements which would warrant prompt investigative action, yet none appears to have been taken. In such cases, reaching a conclusion as to the veracity of the allegations will also require evaluating the credibility of the person making them; in other words, he (as well as any other relevant persons) should be interviewed on this specific matter by the public prosecutor and/or judge, preferably accompanied by a forensic doctor.

34. The CPT requests the comments of the Spanish authorities on the issues raised in paragraphs 30 to 33.

35. The CPT is also concerned that the forensic doctors' reports are not presented in writing by the doctor, but are delivered orally in a question-and-answer session before the court, and a transcription of the doctor's statements, signed by the doctor, appears in the judicial file. **The CPT recommends that written forensic medical reports are produced by the doctor and delivered to the judge.**

36. Finally, according to the measures mentioned at paragraph 26 above, which have been applied on occasion, persons held incommunicado should enjoy the possibility to receive daily visits from their own doctor. This is a welcome development, which is in line with the recommendations repeatedly made by the CPT.

The CPT calls upon the Spanish authorities to ensure that all persons held incommunicado enjoy the right to be examined by a doctor of their own choice. Such a solution would do much, in the Committee's view, to address the issues raised in the foregoing paragraphs.

e. interrogation procedures

37. The persons arrested during the 28 March and 1 April 2007 operations, who were met by the delegation, related that they were questioned for hours on end without interruption, some of them throughout the night. Certain of them alleged that they had been subjected to very severe forms of ill-treatment (see paragraph 16).

They all alleged that, in the course of interrogations conducted without a lawyer present, they were obliged to stand for extended periods, and they were hooded or blindfolded during the interviews. Further, several alleged that they were forced to do push-ups or squats, and one woman claimed that she was obliged, while blindfolded, to do push-ups and balance, alternately, on one leg, after all her clothes had been removed.

38. The delegation gathered elements consistent with allegations of lengthy and/or night-time questioning occurring in the days before the statement was taken in the presence of the duty lawyer. A comparison with the forensic doctors' reports revealed consistency in the alleged interrogation practices and intensity of interrogations. Further, although the detention records kept by the Central Section of the Information Service of the Civil Guard in Madrid are not comprehensive (on this point, see paragraph 41), a number of entries appear to indicate that interviews¹⁷ did occur at all hours of the day or night, and for up to 5 hours' duration; they are quite separate from entries elsewhere in the detention records regarding formal statements given in the presence of a lawyer¹⁸.

Civil Guard officials with whom the delegation met acknowledged that detained persons could be required to stand for periods of time, but never in their cells. They also stated that detained persons were never hooded or blindfolded while they were in their cells. The officials interviewed spoke of what was "usual practice", as no clear rules were laid down regarding such matters.

39. In the light of the elements collected, the CPT has no doubt that most of the persons concerned were questioned, usually on several occasions, by the Civil Guard during the time they spent in incommunicado detention prior to making a formal statement in the presence of a lawyer. It is unacceptable for detained persons to be questioned without the presence of a lawyer.

The CPT also has strong objections to law enforcement officials blindfolding or hooding apprehended persons. In the Committee's experience, the purpose of such a practice is most often to prevent such persons from being able to identify law enforcement officials who inflict ill-treatment upon them. Even in cases when no physical ill-treatment occurs, to blindfold a person in custody - and in particular someone undergoing questioning or being transported from one place to another - is a form of oppressive conduct, the effect of which on the person concerned will frequently amount to psychological ill-treatment.

40. **The CPT calls upon the Spanish authorities to establish clear rules on the way in which interviews by law enforcement officials are to be conducted.** In addition to stressing the total prohibition of any form of ill-treatment, these rules should address inter alia the following matters: informing the detainee of the identity (name and/or number) of those present at the interview; the permissible length of an interview; rest periods between interviews and breaks during an interview; places in which interviews may be conducted; interviewing persons who are under the influence of drugs, alcohol, etc. It should also be required that a record be systematically kept of the time at which interviews start and end, of any request made by a detainee during an interview, and of the persons present during each interview. **Further, the rules should expressly prohibit the blindfolding or hooding of persons who are in police custody, including during interviews. Similarly, forcing detained persons to conduct physical exercises or to stand for prolonged periods should be prohibited.**

¹⁷ These entries read "toma manifestacion" (i.e. 'taking statement (or declaration)').

¹⁸ Typically, these entries read "toma manifestacion abogado" (i.e. 'taking statement (or declaration) lawyer').

f. custody records

41. An examination of the custody records for the March-April operations revealed an absence of detailed records showing the duration of out-of-cell periods. By way of example, the Civil Guard officials interviewed were not able to account reliably for the whereabouts, during a period of 8 hours, of one of the persons detained¹⁹.

Another significant gap observed by the delegation in the custody records concerned the identity of officers in physical contact with the detainees at each stage of detention. For example, the officers in charge of the detention at Intxaurreondo or in charge of escorting the suspects to Madrid were not identified. Such inadequate record-keeping is not conducive to providing a clear, contemporaneous record of the events in case an investigation is carried out. It also potentially exposes officials to false accusations of ill-treatment. Moreover, such a practice is not in compliance with the 14/1995 custody records instructions provided to the CPT by the Spanish authorities, by letter of 7 November 2007, in response to the delegation's immediate observation on this matter.

42. The deficiencies highlighted above would appear to indicate that the Spanish authorities are not in a position to disprove allegations of ill-treatment or to carry out proper investigations into such allegations. The ability to carry out thorough and effective investigations into allegations of ill-treatment and to disprove false allegations is an essential element of the obligations inherent in Article 3 of the European Convention on Human Rights.

The CPT recommends that the Spanish authorities take the necessary steps to ensure that record-keeping in the context of incommunicado detention by law enforcement officials is substantially improved, in the light of the foregoing remarks.

g. information on legal situation and rights

43. Another feature of the incommunicado regime would appear to be a lack of information provided to the persons detained. The persons interviewed gave consistent accounts of being kept totally unaware of their legal situation and the rights from which they could benefit.

Persons placed in incommunicado detention should be informed promptly of their legal situation and of their rights (e.g. to the appointment of a duty lawyer and his/her presence when statements are taken). It also goes without saying that certain of the safeguards mentioned in paragraph 26 above (e.g. the possibility of daily visits from a personal doctor) will not be effective unless brought to the attention of the detained person. Written explanations of these rights could usefully be provided to persons subjected to such a strict regime. **The CPT recommends that detained persons held incommunicado be properly informed about their legal situation and rights.**

¹⁹ The officials eventually conceded that he was possibly held in a vehicle for that period (as alleged by the detained person).

h. application of the incommunicado regime to minors

44. Special safeguards are afforded to minors (aged between 14 and 18 years) under Article 17, paragraph 2, of the Law on the Criminal Responsibility of Minors (LORPM)²⁰. In particular, minors are to be detained for the shortest time possible and never longer than 24 hours, the detention is to be immediately reported to the prosecutor and to the parents or guardians, and they are to be allowed to consult a lawyer before giving their statement to the police²¹. Recent Instructions to National Police and Civil Guard officials (see paragraph 13) also clearly indicate that minors are to be afforded these special protections.

However, LORPM Article 17, paragraph 4, also refers to the application of CCP Article 520 bis, thereby contemplating the application of incommunicado detention to minors. The recent 12/2007 Instructions²² also contain a section which develops in greater detail the modalities of implementation of incommunicado detention in respect of minors²³. With the exception of prior notification of the Audiencia Nacional prosecutor responsible for minors, none of the special safeguards mentioned above would apply in the event of incommunicado detention. The minor would be treated in the same way as an adult: police custody could be prolonged and an incommunicado regime applied, as a result of which he would have no right to have a parent/guardian notified of his detention and whereabouts, no right to be assisted by his or her own lawyer, and no right to meet in private with the duty lawyer before or after giving a statement.

45. In discussions with the CPT's delegation, the Prosecutor-General expressed doubt that the incommunicado regime had ever been applied to minors or that it would ever be in the future.

However, records of the Central Section of the Information Service of the Civil Guard in Madrid show that, in June 2004, a minor was held in custody for 38 hours at the Calle Guzman el Bueno premises, on suspicion of collaboration with an armed group. It would also appear that the detained person provided a lengthy statement to the police before being transferred to the Prosecutor's Office for minors.

The CPT would like to receive a full account of the detention in question, including whether the incommunicado regime was applied provisionally by the Civil Guard, whether it was subsequently judicially authorised, whether the detained person was hooded or blindfolded at any stage of the detention and from which rights he was able to benefit.

46. In the CPT's view, it is unacceptable that, by law, the incommunicado detention regime could effectively trump the protection generally afforded to minors. **The CPT recommends that the relevant legislation (and instructions) are amended without delay so as to prohibit the application of the incommunicado regime to minors.**

²⁰ Organic Law No. 5/2000 of 12 January 2000.

²¹ The latter safeguard only recently adopted, by amendment in Organic Law No. 8/2006 of 4 December to the 5/2000 Organic Law on the Criminal Responsibility of Minors. See also paragraph 58 of this report.

²² See paragraph 13.

²³ See 12/2007 Instructions, Part V, paragraph 9.

i. judicial scrutiny

47. The role of the courts in the prevention of ill-treatment is of crucial importance. This issue was the subject of detailed analysis and recommendations in the CPT's report on the ad hoc visit carried out in December 2005²⁴. That report focussed on safeguards for persons in the custody of law enforcement agencies pursuant to ordinary criminal law.

48. As regards persons suspected of offences referred to in Article 384 bis of the CCP, judicial scrutiny of detention lies exclusively with the Audiencia Nacional. Such detained persons must be "placed at the disposal" of the competent judge of the Audiencia Nacional within 72 hours of their detention. Further, according to Article 520 bis, paragraph 3, of the CCP the competent judge may, "at all times request information on and ascertain the detainee's situation".

However, the information gathered during the 2007 visit confirmed that in practice persons whose period of detention is extended beyond 72 hours are not seen by the judge prior to the decision to extend the detention period. Judicial authorisation to extend detention (invariably incommunicado) up to five days is done by written procedure. Further, in discussions at the Audiencia Nacional, the delegation was informed that this court does not, in practice, avail itself of the opportunity afforded by Article 520 bis, paragraph 3, of the CCP, for direct or delegated judicial supervision. Instead, the role of the forensic doctor, who visits the person daily or even more frequently, is seen to be sufficient. For its part, the CPT considers that visits by the forensic doctor are no substitute for appropriate judicial scrutiny.

Moreover, the delegation's examination of the documentation relating to the detentions of March-April 2007 indicates that, at least as regards the cases examined, the relevant judge of the Audiencia Nacional has taken no action in response to the allegations of ill-treatment. It should be recalled that Spanish law obliges a judge in such a situation either to open a preliminary inquiry into the allegations or to refer the matter to another competent court.

49. As the CPT has emphasised in the past, it would clearly be in the interest of the prevention of ill-treatment for persons suspected of offences referred to in Article 384 bis of the CCP to be seen physically by the relevant judge prior to a decision to extend the detention period beyond 72 hours. The physical presence of the detained persons before the judge would also appear to be a requirement by virtue of Article 5, paragraph 3, of the European Convention on Human Rights.²⁵

The CPT recommends that persons subject to the provisions of Article 520 bis of the CCP are systematically physically brought before the competent judge prior to the taking of a decision on the issue of extending the period of detention beyond 72 hours. If necessary, the relevant legislation should be amended.

²⁴ See CPT/Inf (2007) 30, paragraphs 32 to 57. See also the report on the ad hoc visit carried out in January 2007, which examined the issue of judicial scrutiny by the Audiencia Nacional in the specific context of a hunger strike.

²⁵ See *Öcalan v. Turkey* judgment of 12 May 2005, in which the Grand Chamber stated that the purpose of Article 5 (3) is to ensure that "arrested persons are physically brought before a judge promptly" (see paragraphs 103 to 105).

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

50. In the specific context of incommunicado detention, and in the interest of the prevention of ill-treatment, the CPT welcomes the video-recording of incommunicado detention ordered by two judges at the Audiencia Nacional in certain specific cases (see paragraph 26 above). Nevertheless, in the CPT's view, for this procedure to act as an effective safeguard against ill-treatment, such video-recording should include interrogation rooms (the principal location of alleged ill-treatment) and should monitor all movements into and out of the cells. Further, the video-recording should be mandatory in all cases and should span the entire period of incommunicado detention. Moreover, a procedure should be in place to ensure that the recordings are stored in a secure manner.

The CPT recommends that the relevant steps be taken in the light of the above remarks.

* * *

51. The Spanish incommunicado detention regime imposes a peculiar combination of limitations on fundamental safeguards, at least certain of which appear difficult to justify. At the same time, there continue to be allegations of severe ill-treatment of persons subjected to that regime, and yet there is no evidence of effective action being taken to address the problem. In this report, as in several others produced ever since the first visit in 1991, the CPT has made a number of recommendations aimed at strengthening the protection of persons subjected to incommunicado detention from torture and other forms of ill-treatment, through the reinforcement of safeguards and the remedying of certain procedural deficiencies. Such reinforced safeguards will also operate in favour of protecting law enforcement officials from unfounded allegations of ill-treatment.

The CPT trusts that the Spanish authorities will respond to these recommendations favourably. As matters stand, those authorities might experience difficulty in refuting convincingly allegations of ill-treatment made by persons in incommunicado detention and of fulfilling their obligation to undertake effective investigations into such allegations.

4. Safeguards against ill-treatment (ordinary police custody)

a. introduction

52. The CPT's standards concerning the fundamental safeguards to be afforded to persons deprived of their liberty by law enforcement agencies have been explained at length in previous reports on the Committee's visits to Spain. Moreover, the functioning of these safeguards has been at the centre of the CPT's ongoing dialogue with the Spanish authorities since 1991.

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

53. As mentioned in paragraph 13, new *Instructions on the behaviour required of security forces in order to safeguard the rights of persons arrested or in police custody*²⁶ were issued by the Secretary of State for Security to the National Police and the Civil Guard only four days before the CPT's visit began.

It was evidently premature, during the visit, to assess the effect of these Instructions. Officials on duty at most of the establishments visited had no knowledge of them. One exception was the Civil Guard detention unit at Intxaurreondo in San Sebastian, where the delegation noted, however, that the official copy of the Instructions in use on the premises omitted certain chapters, such as those concerning the duration of custody, the rights of detained persons and the detention of foreign nationals or minors.

In general terms, the CPT welcomes the adoption of these instructions which, if effectively implemented in all places of detention, could do much in bridging the gap between law and practice in this area.

b. notification of custody

54. As regards notification of custody, most detained persons with whom the delegation spoke stated that they had been asked by the police whether they wanted someone to be informed of their situation when they were brought to the police station. The new Instructions to National Police and Civil Guard officials include a welcome reminder (in Part III.4) that this right to notify a third party is to be guaranteed.

However, many persons interviewed stated that they had no confirmation as to whether anyone was in fact contacted. Moreover, a number of foreigners stated that they had not been permitted to inform anyone of their situation.

²⁶ *Instrucción 12/2007 (del 14 de septiembre 2007) de la Secretaria de Estado de Seguridad sobre los Comportamientos Exigidos a los Miembros de las Fuerzas y Cuerpos de Seguridad del Estado para Garantizar los Derechos de las Personas Detenidas o bajo Custodia Policial.*

The CPT recommends that the necessary steps be taken to ensure that all persons detained in police stations are permitted to have a close relative or another third party of their choice informed of their situation and that they are subsequently informed as to whether such a communication had occurred.

c. access to a lawyer

55. One of the focus areas of the 2005 ad hoc visit was to examine the effectiveness of the right of access to a lawyer as from the outset of deprivation of liberty. The CPT's delegation concluded that detained persons routinely spent some considerable time in police custody before having access to a lawyer, and were not able to meet in private with a lawyer until after signing a formal statement made to the police or civil guard. Further, the delegation found clear indications of ill-treatment suffered by detained persons which might have been avoided had they been able to exercise the right of access to a lawyer, as from the outset of deprivation of liberty²⁷. In the light of these findings, the CPT recommended once again that the Spanish authorities reinforce the existing legal framework to ensure an effective system of safeguards is in place and fully functioning.

In their response to the report on the 2005 visit, the Spanish authorities do not deny that the existing legal system allows law enforcement officials to detain a person "without legal assistance during the first 8 hours" following his detention. However, they attribute the time-delay in having access to a lawyer to the lack of resources available to Bar Associations and state that the only foreseeable solution would be to introduce video-conferencing²⁸.

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

For this safeguard to be effective, access to a lawyer must be guaranteed as from the very outset of custody and the lawyer and the detained person must be able to meet in private. From the standpoint of prevention of ill-treatment the introduction of video-conferencing would be totally inadequate.

57. The delegation which carried out the 2007 visit again found that, without exception, persons deprived of their liberty first met with a lawyer when they made a formal statement to law enforcement officials, hours after they had been brought into custody. They were able to meet in private with a lawyer only after making such a statement. Moreover, persons who declared that they did not want to make any statement to the police did not see a lawyer until such time as they were brought before the judge (a period which could last a matter of days rather than hours).

²⁷ See CPT/Inf (2007) 30, paragraph 50.

²⁸ See CPT/Inf (2007) 31, page 9.

58. The new Instructions referred to at paragraph 53 above appear to indicate that the authorities acknowledge that access to a duty lawyer should be provided more promptly. Part III.5 provides that the request to the Bar Association shall be reiterated if the lawyer does not arrive within three hours. This is a welcome attempt at accelerating the process.

Nevertheless, the CPT notes that the Instructions are silent on the question whether or when persons should be permitted to meet the lawyer (personal or court-appointed) in private. The legislation on this point in regard to minors has changed. Article 17, paragraph 2, of the Organic Law on the Criminal Responsibility of Minors now makes explicit provision for the minor's right to a private meeting with his or her lawyer prior to, and after giving a statement to the police²⁹. The CPT welcomes this positive development. It would be equally significant if this safeguard were provided to all persons deprived of their liberty, as the Committee has been recommending since 1991. **The CPT recommends that the relevant legislation and implementing instructions to the law enforcement authorities be amended, so as to make clear that the right of access to a lawyer applies as from the very outset of custody and includes the right to meet in private with the lawyer.**

d. access to a doctor

59. On the whole, access to a doctor for persons in police custody was guaranteed in a satisfactory manner as regards the duty doctor. Although the legislation does not provide for a doctor of one's own choice, in all the police stations visited, detained persons had prompt access either to a hospital or to a doctor upon request. However, the delegation noted that at "Les Corts" Mossos d'Esquadra District Police Station in Barcelona, medical examinations took place in the presence of custodial officers.

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

The CPT recommends that steps be taken at "Les Corts" District Police Station and, if appropriate, in other police establishments in Spain, to ensure that all medical examinations are conducted out of the hearing and - unless the doctor concerned expressly requests otherwise in a given case - out of the sight of police staff.

²⁹ Organic Law 5/2000, of 12 January, as amended by Organic Law 8/2006 of 4 December.

e. information on rights

60. The new Instructions to the National Police and Civil Guard provide (in Part III.1) that arrested persons should be immediately informed of their rights in a language they can understand. The CPT welcomes this positive reminder. However, the Instructions do not provide that persons are to be requested to sign a statement attesting that they have been informed of their rights. **The CPT recommends that an explicit requirement to this effect be introduced in instructions to law enforcement officials.**

61. It would appear that persons detained by the police were systematically shown an information sheet about their rights before being placed in a cell. However, detained persons were not actually provided with a copy of their rights and a number of persons explained that they did not understand what the rights were or how they should be exercised.

As to the reason why detained persons were not provided with a copy of the information sheet about their rights, the delegation was told by various National Police and Mossos d'Esquadra officers that providing detainees with a piece of paper would represent a suicide risk, either through cutting themselves or choking. Such reasoning is manifestly unconvincing. It is essential that detained persons are able to fully comprehend their rights and, in this regard, it is often necessary for persons to be able to read such a sheet after they have been processed and placed in a cell. This is all the more important for foreign nationals who may not understand the Spanish legal system or even the language. The CPT's delegation came across a number of foreign nationals from a range of countries who did not speak Spanish and who did not appear to have been informed of their rights in a language they understood.

The CPT recommends that steps be taken to ensure that detained persons are provided with a copy of the information sheet, if necessary in a language other than Spanish which they can understand.

f. custody records

62. The integrated computer recording programme used by all Mossos d'Esquadra and Catalan municipal police forces appeared to be a good system. All movements and occurrences, such as "leaves cell to make a declaration" or information on when food was served or who was observing Ramadan, etc., were recorded. The programme also signalled when 60 hours had elapsed, so that staff could take action before the 72 hour maximum detention period was reached.

63. Likewise, the computerised custody record system in place at Basque police (Ertzaintza) stations is an example of impressive technology linking automatic video-recording to documentation. However, this system did not permit certain verifications which would be useful when assessing the treatment of detained persons. For example, consultation of the register does not enable the occupancy level to be verified, nor to check the number and identity of minors who had been held, during the previous year. **The CPT invites the Spanish authorities to revise the computerised custody record system in such a way as to permit effective monitoring.**

g. inspections

64. Systems for the inspection of law enforcement agency detention facilities by an independent authority are capable of making an important contribution towards the prevention of ill-treatment of persons held by law enforcement agencies and, more particularly, of ensuring satisfactory conditions of detention. To be fully effective, the visits by such an authority should be both frequent and unannounced, and the authority concerned should be empowered to discuss in private with detained persons.

In response to the CPT's invitation to the Spanish authorities to establish such a system of visits to law enforcement agency detention facilities, the authorities have indicated that the Ombudsman institutions and the judicial authorities offer the utmost guarantees concerning the protection of persons under arrest. However, as had been the case during previous visits, the CPT's delegation found no evidence to suggest that either of these bodies are conducting on-the-spot, unannounced, supervision of places of detention on a frequent basis.

The CPT recommends once again that the Spanish authorities take the necessary steps to guarantee frequent and unannounced visits to law enforcement agency detention facilities by either substantially reinforcing the capacity of the existing bodies or establishing a new specialised independent authority.

5. Conditions of detention

65. The conditions of detention in the National Police stations visited by the CPT's delegation varied considerably. At the Provincial Headquarters in San Sebastian, the police stations of Arganzuela, Moratalaz and Tetuan, in Madrid, and at establishments in Grenollers and St. Feliu de Llobregat³⁰, in Catalonia, conditions in the cells were generally acceptable. Cells were on the whole clean, of an adequate size and equipped with a means of rest (a plinth) and a mattress; the cells had artificial lighting and were reasonably well ventilated. However, apart from St. Feliu de Llobregat, none of the cells had access to natural light or possessed call bells.

There have been few improvements at Playa de las Americas³¹ and Santa Cruz Police Stations in Tenerife since the CPT's visit in 2003; the dingy cells still have no access to natural light and the artificial lighting and ventilation remain poor. Similar criticisms could be made of the conditions at the Barcelona District Headquarters; with the exception of the cell area being clean, the situation had not evolved since the CPT's previous visits in 1994 and 1998³². In addition to the same defects as described above, detained persons at Villa de Vallecas Police Station in Madrid were not provided with a mattress at night.

³⁰ The transfer of policing responsibilities to the Mossos d'Esquadra meant that this police station would no longer hold detainees from early 2008 as a new purpose-built police station was envisaged.

³¹ The delegation noted that three one-storey pre-fabricated accommodation units were being constructed (each roughly 100m²) to cope more adequately with the frequent arrival of large numbers of irregular migrants.

³² See CPT/Inf (1996) 9, Part 2, paragraph 44 and CPT/Inf (2000) 5, paragraph 37.

66. The conditions at Puente de Vallecas Police Station were totally unacceptable. The cell area was dilapidated, dirty and malodorous; urine, vomit and rotting food were found in several of the cells. There was also no access to natural light and the ventilation was woefully inadequate. The very noisy ventilation system was hardly ever turned on as one of the side effects was to inject a foul smell into the area where the police officers were located above the cells. Further, the common toilet in the corridor outside the cells was blocked and the flush broken. In addition, the cells did not possess call bells.

At the final talks with the Spanish authorities on 1 October 2007, the CPT's delegation invoked Article 8, paragraph 5, of the Convention and requested that the cells at Puente de Vallecas Police Station be taken out of service. By letter of 7 November 2007, the Spanish authorities informed the CPT that the cells had been closed on 17 October 2007, and that persons detained at Puente de Vallecas were transferred to the Central Registry of Detained Persons at Moratalaz.

67. As regards Civil Guard establishments, material conditions at the Vizcaya District Headquarters and Baracaldo Station, both in Bilbao, as well as at the Alava District Headquarters in Vitoria, were generally satisfactory. However, none of the cells had access to natural light and some of the cells were small (4.5m²).

The four cells visited at the Intxaurreondo Station in San Sebastian had poor ventilation and also had no access to natural light. More generally, the very austere material conditions rendered these cells unsuitable for stays of longer than a few hours.

The cells of the Central Section of the Information Service at Calle Guzman el Bueno in Madrid had no access to natural light and poor ventilation, and their narrow configuration and stark conditions combined to make them oppressive. Given that persons are often kept in this establishment for up to five days, it is essential that the proposed construction of a new detention area (which should include an outdoor exercise area) be completed as soon as possible.

68. The CPT recommends that conditions of detention in the National Police and Guardia Civil establishments visited be reviewed and existing shortcomings remedied, having regard to the remarks made in paragraphs 65 to 67 above. Particular attention should be paid to cell lighting, ventilation and hygiene and the provision of mattresses at night; steps must also be taken to ensure that detained persons have ready access to decent sanitary facilities at all times, including at night. Further, if persons are detained more than 24 hours there should be provision of facilities for outdoor exercise.

The CPT would also like to receive confirmation that the construction of the new detention area of the Central Section of the Information Service at Calle Guzman el Bueno in Madrid will comply fully with the CPT's standards, in particular as concerns access to natural light, ventilation and the provision of facilities for outdoor exercise.

69. The conditions of detention in the area for foreigners at Barajas International Airport, Madrid, were basic. The three large one-room units were sparsely furnished, with a limited number of chairs and beds, and some mattresses on the floor. Further, there was no access to outdoor exercise nor activities of any other kind, and no specific support was provided for children. That said, the lighting was adequate, the ventilation sufficient, and the sanitary facilities were clean.

Such conditions are only suitable for holding persons for short periods of 24 hours or less. However, the CPT was informed that persons were being held in the rooms for upwards of seven days. This is not acceptable.

The CPT recommends that the Spanish authorities take the necessary steps either to improve significantly the conditions of detention, including through the provision of an outdoor exercise yard, or to ensure that nobody is detained longer than 24 hours at the detention area for foreigners at Barajas International Airport.

70. As regards the Mossos d'Esquadra establishments, the delegation noted that the Catalan authorities have undertaken a building programme to replace the former National Police Stations with modern purpose-built facilities. It should also be noted that the policy in Catalonia is to centralise the detention areas for persons arrested by the police in the District Stations of the Mossos d'Esquadra. All the establishments visited were of a similar design and layout, with the detention areas being located in the basement. Further, in the light of the incidents referred to in paragraph 19 above, CCTV has now been installed in all common areas of "Les Corts" District Station in Barcelona and is scheduled to be installed in the detention areas of all Mossos d'Esquadra Police Stations.

71. The detention area at the District Station of "Les Corts" contained 35 cells with a capacity to hold 100 detainees; four of the cells, along a separate corridor, were designated for women detainees and a further four cells for juveniles. At the time of the visit, there were 46 persons in custody. Most of the cells were some 9.5m², with a concrete plinth running the length of one wall, on which two persons could lie down (every detainee was provided with a mattress and a blanket). There were also a number of larger cells for five detainees. Material conditions were on the whole acceptable, notwithstanding the absence of natural light. However, the ventilation system was clearly not operating effectively (there was a rank smell of urine and body odour throughout the detention area).

The District Stations in Girona, Grenollers and Hospitalet contained 7, 10 and 9 cells respectively, and were of similar description to those observed in "Les Corts".

To sum up, the main deficiencies observed in Mossos d'Esquadra establishments concerned a lack of access to natural light and ventilation, no call bells and no facilities for outdoor exercise. **The CPT recommends that steps be taken to remedy these deficiencies.**

72. The CPT's delegation also visited Grenollers and St. Feliu de Llobregat Municipal Police Stations in Catalonia, where the conditions of detention were found to be generally satisfactory. At Grenollers, persons were only detained for a few hours before being transferred to the nearby District Mossos d'Esquadra establishment. St. Feliu de Llobregat contained four relatively small cells, with a large adjoining communal area and separate sanitary facilities, all of which were clean and in good condition. Given the size of the cells, **the official overnight capacity should be reduced from nine persons to four**; however, it should be noted that the numbers detained in this police station were low (83 in 2006 and 55 during the first nine months of 2007). As in all other police establishments, **the main defect was an absence of access to natural light.**

73. Conditions of detention were on the whole acceptable in the recently constructed Ertzaintza establishments visited in the Basque Country. In particular, cells in the police stations of Bilbao and Vitoria, and the Gipuzkoa District Information and Analysis Service in Oiartzun were clean, of a reasonable size for the number of persons they were used to accommodate, and equipped with a means of rest (a plinth) and a mattress. Most cells possessed a call bell and there was sufficient artificial lighting. However, **only very few cells had access to natural light and there was no provision for outdoor exercise.**

74. The CPT has noted the stated willingness of the Spanish authorities to improve conditions of detention in law enforcement establishments. Further, the CPT has observed that in both the Basque Country and Catalonia modern purpose-built police stations have recently been constructed; the conditions within the cells areas of these new stations represent an improvement. However, it is regrettable that the criteria advocated by the CPT³³ - notably as regards access to natural light and ventilation - have not been taken into account when designing new detention areas in police stations.

The CPT calls upon the Spanish authorities to establish standards for law enforcement agency detention facilities, taking due account of the Committee's criteria; compliance with those standards and with instructions regarding conditions of detention should be effectively monitored.

³³ Cells should be clean, of a reasonable size for the number of people 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 (for example, a 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. Those detained for extended periods (twenty-four hours or more) should, where possible, be offered outdoor exercise every day (cf. CPT/Inf (98) 9, paragraph 49).

B. Prison establishments

1. Preliminary remarks

75. In 2007, the CPT's delegation visited Madrid V, San Sebastian and Nanclares de la Oca Prisons, and focused its attention on the special departments and the regimes offered therein. These establishments fall under the authority of the Ministry of Interior of Spain.

The delegation also visited Brians 1, Girona, Modelo and Quatre Camins Prisons, all of which fall under the responsibility of the Department of Justice of the Autonomous Regional Government of Catalonia (Generalitat de Catalunya). The visits to these prisons focused on the special departments, disciplinary units and modules holding prisoners who were considered to be "unadapted" to prison life.

76. At the time of the visit, the number of persons imprisoned in Spain (excluding Catalonia) stood at 57,042, of whom nearly a quarter were on remand³⁴. With an official total capacity of 39,893 persons, the overall occupancy level was 143%.

The steady increase in the prison population may be attributed to a combination of factors; notably, the use of and length of time on remand, the underdeveloped use of alternatives to imprisonment, the increasing length of sentences and the reduced possibilities for conditional release or remission. In response to the problem of prison overcrowding, the Spanish Government has adopted a plan to increase the prison estate through the construction of 18 new prison establishments, 32 open centres for social reintegration and 5 secure units for mother-child accommodation.

77. In Catalonia, the prison population was 9,363 at the time of the visit for an official capacity of some 6,600 places. The Catalan authorities informed the delegation that longer sentences were being imposed by the courts, with 60% of prisoners being sentenced to more than five years imprisonment and some 25% to more than ten years. The consequence of this policy was increased overcrowding, with the prison population expanding by some 500 prisoners every year, and additional challenges to meet the constitutional principle of rehabilitation and re-education of prisoners. The CPT's delegation saw at first hand the consequences of overcrowding in the prisons, notably at Girona and Modelo Prisons. Moreover, some 40% of the persons in prison in Catalonia were foreign nationals who, because they generally could not be paroled, presented specific difficulties for the prison administration.

To address these challenges the Catalan authorities approved a renovation plan for the prison system in 2004. The plan involves constructing eight new prisons and closing down six of the current establishments by 2010, including Modelo Prison. Although a large prison for 1,400 prisoners (Brians II) was in the process of opening next to Brians 1 Prison, the Catalan authorities stressed that the other new prisons would have a capacity of 750 (or lower), as this was considered the optimum size for a prison. As regards remand prisoners, the intention was to reduce their number to below 20% from the existing 22%, and to build new remand prisons in the major urban centres to ensure inmates remained close to their families. The authorities are also trying to raise the percentage of prisoners placed in open regime establishments from 26% to 30%, and to construct new establishments in urban areas.

³⁴

Pre-trial custody is subject to time-limits ranging from six months to four years.

78. The CPT recognises the efforts being made by both the Spanish and Catalan authorities to expand and modernise the prison estate. However, the CPT considers that the building of additional accommodation is unlikely, in itself, to provide a lasting solution to the challenge of overcrowding. A comparison with other European countries illustrates the difficulty of attempting to resolve the issue of overcrowding solely through increasing capacity. By contrast, the promotion of policies to limit and/or modulate the number of persons being sent to prison can be an important element in maintaining the prison population at a manageable level.

The CPT would like to draw the attention of the Spanish authorities to Recommendation R (99) 22 of the Council of Europe's Committee of Ministers on this issue. Besides laying down some basic principles, the recommendation also suggests a number of specific tools which can be used to reduce prison overcrowding or to control prison population inflation. Regard should also be had to Recommendation R (2003) 22 of 24 September 2003 concerning conditional release.

The CPT, therefore, recommends that the Spanish authorities continue vigorously to pursue multi-faceted policies designed to put an end to overcrowding in prisons, having regard *inter alia* to the principles set out in Recommendations R (99) 22 and R (2003) 22 as well as other pertinent Recommendations of the Council of Europe's Committee of Ministers³⁵. The Committee would like to receive detailed information on the measures being taken by the Spanish authorities in this respect.

79. The delegation which carried out the 2007 visit observed once again the excessive overcrowding and poor conditions at Modelo Prison, which had already been criticised in the reports on the 1994 and 1998 visits. In the CPT's report on the April 1994 periodic visit to Spain, it had called for urgent measures to be taken in respect of this prison and stressed that "above all, the number of prisoners held in the establishment must be reduced"³⁶. Further, it pointed out that the act of depriving someone of his or her liberty carries with it the responsibility for detaining that person in conditions which are consistent with the inherent dignity of the human person (i.e. there is a duty upon the State to provide decent conditions of detention).

The CPT considers that as far as many prisoners in the Modelo Prison are concerned, the Spanish authorities have failed to live up to that responsibility. If the situation is not remedied in the near future, it will give rise to an issue under Article 10, paragraph 2, of the Convention.

The CPT calls upon the authorities to re-double their efforts to reduce the overcrowding and improve the conditions of detention in Modelo Prison.

³⁵ See, for example, Recommendation R (2000) 22 of 29 November 2000 on improving the implementation of the European rules on community sanctions and measures.

³⁶ See CPT/Inf (96) 9 (Part 2), paragraph 131.

2. Establishments under the authority of the Department of Justice of the Autonomous Regional Government of Catalonia

80. As mentioned above, the CPT's delegation visited the following prisons:

Brians 1 Prison, located on the outskirts of north-east Barcelona, was opened in 1991 with a capacity of 900. The original four self-contained modules and special department for "closed regime" have been supplemented by a fifth module and a half-way house, each holding 300 prisoners, and by a forensic psychiatric unit. There is also a separate women's prison, located in the south-east corner of the prison complex, with a capacity to accommodate 200 prisoners. On the day of the visit the prison held 1,680 prisoners for an official capacity of 1,830.

Girona Prison, located in the centre of the town of Girona, accommodates male and female remand and sentenced prisoners. At the time of the delegation's visit, the prison held 184 prisoners for a capacity of 130.

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 continues³⁷ to have an official capacity of 1,100; on the first day of the delegation's visit, it was accommodating 1,899 inmates, with roughly two-thirds remand and one-third convicted prisoners.

Quatre Camins Prison, located near the town of Grenollers, was built to a radial design with four modules accommodating some 900 prisoners. Since its opening in 1989, the capacity of the prison has increased to 1,800 with the installation of three pre-fabricated treatment modules for prisoners approaching the latter part of their sentences, the construction of a high-security special closed regime unit (DERT) and of an open regime module. At the time of the visit, the prison held 1,784 prisoners.

a. torture and other forms of ill-treatment

81. At Brians 1 Prison, the delegation met a number of prisoners in several different modules who alleged that they had been ill-treated by prison officers. Such ill-treatment apparently consisted of blows with truncheons and punches and kicks to the body, as well as subjecting prisoners to unwarranted intimate strip-searches. The allegations also concerned a pattern of prisoners being taken to the segregation unit where, after being restrained to a bed, they were apparently subjected to punches and blows to their body.

³⁷

The CPT visited Modelo Prison during the periodic visits of 1994 and 1998.

82. Further, from the information gathered by the delegation, it appeared that all too often resort to means of restraint was, in practice, for punitive reasons. Several of the prisoners met alleged that following an incident (usually a fight or an altercation with prison officers) they had been taken to a cell in the segregation wing, fixated to a bed and had received punches to the head and body from prison officers. In at least three cases, the prisoners were left fixated to the bed for more than 15 hours, and had all been forced to urinate in their clothes and on the floor. One of them told the delegation that he had begged to be released from the so-called “superman”³⁸ position as his back was in so much pain, but that he was only released once he had provided the prison officers with certain information that they were seeking. Such treatment could, in the CPT’s view, be qualified as amounting to torture.

83. In its reports to the Spanish authorities, the CPT has consistently highlighted the importance of the Ministry of Interior, the Prison Service and prison governors delivering the clear message that ill-treatment of inmates is not acceptable and will be dealt with severely. In the light of the information gathered during the 2007 visit, the **CPT recommends that the Catalan authorities deliver to staff at Brians 1 Prison, at regular intervals, the message that all forms of ill-treatment, including verbal abuse, are not acceptable and will be the subject of severe sanctions.** More specifically, **prison officers in this establishment, and in others, must be made fully aware that the force used to control violent and/or recalcitrant prisoners should be no more than is strictly necessary and that once prisoners have been brought under control there can be no justification for them being struck.**

84. In many instances, prisoners, against whom force had been used, were not examined by a doctor and in those cases where they were seen by a member of the health-care staff, a full examination did not take place and the injuries were not properly recorded (allegations not noted down in full and injuries observed not described in detail). A prisoner against whom any means of force have been used should have the right to be immediately examined and, if necessary, treated by a medical doctor. This examination should be conducted out of the hearing and preferably out of the sight of non-medical staff, and the results of the examination (including any relevant statements by the prisoner and the doctor's conclusions) should be formally recorded and made available to the prisoner, and to his or her lawyer. Further, the existing procedures should be reviewed in order to ensure that whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a prisoner, the record is systematically brought to the attention of the relevant prosecutor.

The CPT recommends that the necessary steps be taken to ensure that medical examinations are carried out in accordance with the approach outlined above.

³⁸ The name of such a position derives from the fact that the person is placed face down in a supine position, with one arm attached to the bed at the level of the head and the other arm pulled down the length of the body and attached to the bed. Each leg is also strapped to the bed.

85. Several prisoners met by the delegation, particularly at Brians 1 and Quatre Camins Prisons, alleged that they had been threatened or indeed disciplined or their privileges removed because they had made a complaint. For example, a prisoner who witnessed another prisoner being physically assaulted by staff was himself apparently threatened with being classified as “dangerous” and being sent to the special department, if he testified to the event. Another foreign prisoner explained how he had lost his job and was transferred to another module after he made a complaint.

The CPT recommends that prison staff receive a clear message that any kind of threats or intimidating action against a prisoner who has complained, or attempts to prevent complaints or requests from reaching the relevant supervisory bodies, will not be tolerated and will be severely punished.

86. The CPT’s delegation did not have an opportunity to examine the medical files relating to the cases of alleged ill-treatment of prisoners by staff at Quatre Camins Prison in October 2004, following the disturbance that took place at this prison. Further to its previous correspondence with the authorities on this matter, **the CPT would like to be informed about the outcome of the investigations and court procedures concerning prison staff members involved in these cases of alleged ill-treatment.**

87. The CPT has grave concerns about the use of means of restraint within the prisons of Catalonia, as observed by its delegation in the four prisons visited. These concerns relate to the reasons for the resort to fixation, its duration, the methods employed, the lack of supervision and the inadequate recording of the measure.

The cases below represent a sample of the prisoners met by the CPT’s delegation in the four prisons visited, who were subjected to the use of means of restraint for prolonged periods in the months prior to the CPT’s visit to Spain.

- i. A prisoner in Quatre Camins Prison appears to have repeatedly been subject to physical restraint because of nervous behaviour or threats to prison officers. For example, according to the Head of Shift’s report of 10 September 2007, the inmate in question was found in his cell at 09h30 in an agitated and nervous state, and shouted “insults” at the officers³⁹. The inmate apparently agreed, after initially refusing, to follow instructions to leave his cell. However, the prison officers decided to take him to the segregation unit, where he was fixated face down in the “superman” position to a bed in the middle of the cell; his legs were attached with straps and his wrists with metal cuffs. He was fixated in such a position for more than 27 hours (10h00 on 10 September to 13h15 on 11 September 2007). During this time he was not released to go to the toilet and urinated on the bed, wetting his clothes; he also apparently vomited. The prisoner claimed that no doctor was present when he was fixated nor did he see a doctor when he was released.

³⁹ The inmate is quoted as saying “I cannot shut up because I am nervous. I have to speak out. What is the prison officer’s name? If I have to stay in prison my lawyer will hear about it”.

- ii. An inmate in Modelo Prison, who did not speak Spanish, told the delegation that on 14 June 2007, during lunch in the mess hall, he had inadvertently eaten some fish to which he was allergic. Once he realised this fact, he allegedly got up from his table and approached a prison officer with his tray, attempting to explain his problem. However, the prison officer apparently interpreted the gesture as aggressive and the inmate was frog-marched to Gallery N° 6, where he was fixated face down in the “superman” position to a bed (placed in the centre of the cell), the fixing being accomplished by means of straps for his legs and metal cuffs for his wrists. In reaction to his allergy to fish he vomited on the bed and floor. After three hours he was uncuffed and given sheets but had to sleep in the cell with the vomit on the floor. The next day he received a five-day disciplinary sanction of isolation. Subsequently, he was able to see a doctor who spoke a language in which he could communicate and he was placed on a diet with no fish.
- iii. Another inmate in Modelo Prison, known to have back problems, was fixated at 09h55 on 9 April 2007 in the “superman” position with cloth straps. The inmate was seen by a doctor at the outset and again at 12h30 and 16h00. At 22h15, after lying for more than 12 hours face down in the “superman” position, the same doctor ordered the straps to be removed due to the inmate suffering severe back pains. In the personal file of the inmate, the doctor noted that the patient had a history of back problems. Further, the doctor noted that the position in which the inmate was fixated had a negative impact on his condition⁴⁰. It would appear from the file that the condition of the inmate was known to the health care service prior to being fixated. Moreover, the doctor acknowledges that the “superman” position both exacerbates the inmate’s back problems, and is a direct cause of pain. Nevertheless, the inmate was fixated again, apparently in the same position, three months later in July 2007.
- iv. In Brians 1 Prison, the delegation met a female prisoner who, following an argument with another prisoner, had been taken by five prison officers to a cell in the Special Unit, where she was fixated, face down, by the arms and legs with straps from 20h00, on 17 September 2007, to 09h30 the next morning. During this period nobody came to speak with her or to see if she needed to go to the toilet. The personal file stated that the prisoner was fixated because she was suicidal. However, the medical staff consulted informed the delegation that the appropriate procedure in such a case would be for the prisoner to be subject to fixation in the medical unit. The prisoner herself categorically denied having any suicidal tendencies when she met with members of the delegation. The head of shift provided conflicting explanations to the delegation concerning the reasons for resorting to fixation, claiming on the one hand that the prisoner had been suicidal, but on the other hand that the prisoner was fixated because she had been behaving in a violent manner.

The above cases could, in the CPT’s view, amount to inhuman and degrading treatment or even torture.

⁴⁰ *“Informe de visita en celda. Paciente con antecedente de discopatía lumbar múltiple por hernia discal. Antes de ser sancionado consulta por persistencia de su dolor reagudizado. El dolor es más intenso debido a la postura de contención. Considero que dicha posición repercute de manera negativa a su condición clínica por lo que no debe permanecer atado y que adopte su posición antialgíca fisiológica.”*

b. means of restraint

88. The laws and regulations governing prisons in Catalonia state clearly that resort to fixation should only occur when no other means can be used to achieve the desired outcome. However, in practice, other options were clearly not being exhausted before fixation was used. Further, termination of the measure of fixation was not occurring once the purported reason for its use was no longer present. In nearly all the cases reviewed by the delegation the period of fixation lasted 12 hours or more instead of until the person calmed down. Moreover, it was the prison officer in charge of the shift who decided, normally with the formal approval of the Director, when the means of restraint should be removed.

The method of fixation, lying supine on a bed, face down, with the arms (one arm above the head and the other pulled down the length of the body) attached to the bed with either metal cuffs (Brians I, Girona and Quatre Camins Prisons) or cloth straps (Brians I and Modelo Prisons) and the legs attached with straps, in the so-called “superman” position, was pain inducing. The longer a prisoner was kept fixated in such a position the greater the pain.

89. The supervision of the fixated person was inadequate. It consisted of the prison officer checking on the prisoner every two hours, either visually through the door or via CCTV (for example in the DERT in Quatre Camins). As prisoners were fixated with their feet towards the door and staff members rarely entered into the cells, there was hardly any interaction between the prison officer and the fixated prisoner.

As regards medical supervision, a doctor was informed in the event of a prisoner being fixated. However, the delegation’s observations indicated that the medical supervision of such prisoners was at best perfunctory. Medical staff did not attempt to engage with prisoners who were fixated, either to verify whether they were agitated or to calm them down; nor did they comment on the degrading practice of inmates soiling themselves while fixated. The delegation also noted that medical staff did not seem to object when inmates deemed as having suicidal tendencies or psychiatric problems were fixated in a non-medical setting. Moreover, the medical records concerning prisoners who were fixated were sketchy.

90. In response to the immediate observation made by the delegation regarding the use of means of restraint, the Spanish authorities forwarded to the CPT a copy of the revised Circular (2/2007) issued by the Director of the Catalan Prison Service on 18 October 2007. The CPT welcomes the swift action taken by the authorities to address certain of the above concerns, such as the requirement to no longer use metal cuffs but only cloth straps to fixate prisoners. Nevertheless, the Circular does not address all the concerns raised by the Committee, notably in respect of the reasons for resort to fixation, its duration and supervision.

91. The CPT considers that the facts found in Spain call for a comprehensive approach towards the regulation of resort to fixation⁴¹ in prison, taking into consideration the following principles and minimum standards.

- Regarding its appropriate use, fixation should only be used as a last resort to prevent the risk of harm to the individual or others and only when all other reasonable options would fail to satisfactorily contain those risks; it should never be used as a punishment or to compensate for shortages of trained staff; it should not be used in a non-medical setting – it being understood that a prison health-care centre constitutes a medical setting.
- Any resort to fixation should always be either expressly ordered by a doctor or immediately brought to the attention of a doctor.
- The equipment used should be properly designed to limit harmful effects, discomfort and pain during restraint. In this respect, arms and legs should be immobilised with specially designed straps; handcuffs should never be used. Staff must be trained in the use of the equipment.
- The position in which a person is fixated should not cause pain.
- The duration of fixation should be for the shortest possible time (usually minutes rather than hours). The exceptional prolongation of restraint should warrant a further review by a doctor. Restraint for periods of days at a time cannot have any justification and would amount to ill-treatment.
- Fixation should normally take place out of the sight of persons other than staff, unless there are clear benefits to the person concerned.
- Every instance of fixation of an individual must be recorded in a specific register established for that purpose, in addition to the individual's file (and running record). The entry should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure, the name of the doctor who ordered or approved it, and an account of any injuries sustained by the person or staff. This will greatly facilitate both the management of such incidents and oversight into the extent of their occurrence.
- Persons subject to fixation should receive full information on the reasons for the intervention.
- The management of any establishment which might use fixation should issue formal written guidelines, taking account of the above criteria, to all staff who may be involved.

As regards the supervision of persons subject to fixation the following additional safeguards should apply, bearing in mind the potential risks associated with recourse to this measure:

- An individual subject to fixation should, at all times, have his/her mental and physical state continuously and directly monitored by an identified member of the health-care staff, who can offer immediate human contact to the person concerned, reduce his/her anxiety, communicate with the individual and rapidly respond, including to the individual's personal needs regarding oral intake, hygiene and urination and defecation. Such individualised staff supervision should be performed from within the room or, if the inmate so wishes, very near the door (within hearing and so that personal contact can be established immediately). The supervising staff member should be required to maintain a written running record.

⁴¹

I.e. the physical immobilisation, usually by the arm(s), leg(s) and/or trunk, of a person lying supine on a bed/mattress.

Further, the person concerned should be given the opportunity to discuss his/her experience, during and, in any event, as soon as possible after the end of a period of restraint. This discussion should always involve a member of health-care staff or another member of staff with appropriate training.

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

c. prisoners subject to special regimes

92. In previous visits, the CPT has examined the position of inmates who are considered to be “dangerous” or “unadapted to an ordinary prison regime” (i.e. prisoners subject to the provisions of Article 10 of the General Organic Law on Prisons). Particular concern was expressed in relation to the regimes and to the staff-prisoner relations in the special departments⁴².

93. In Catalonia, all sentenced prisoners spend the first month of their sentence in an admission department during which time they are to be assessed by a multidisciplinary team before being allocated to one of the prison accommodation units. In both Brians 1 and Quatre Camins Prisons, there appeared to be an attempt to differentiate the type of prisoners allocated to each residential module roughly according to the type of crime and length of sentence, taking into account the individual’s ability to adapt to prison life.

However, prisoners who commit violent offences whilst in custody and are considered dangerous or who are unable to adjust to prison life will not only undergo the disciplinary sanctions, but can also be placed on a “closed regime”. In such cases, the prisoner is transferred to a closed unit or a special department (called *Departament Especial de Regimen Tancat*, more commonly known as DERT), where the regime is more restrictive. The CPT’s delegation visited three of the four prisons in Catalonia with special departments.

94. As regards material conditions, the purpose-built DERT in *Quatre Camins Prison* consisted of four parallel two-storey accommodation wings (A-D), each containing 20 single-occupancy cells. Four of the cells were used for isolation purposes, including restraint, which meant the department’s capacity was 76; on the day of the visit there were 68 prisoners. The cells were of a sufficient size (12.7m²), containing in-cell sanitation, a fixed bed and table, a shelving unit and a chair. The ventilation and lighting were sufficient and there was adequate access to natural light. The department also contained several association and interview rooms as well as a gym and an outdoor exercise yard for each wing.

⁴² See CPT/Inf (2000) 5, paragraphs 65 to 70 and CPT/Inf (2007) 28, paragraphs 77 to 83.

The special department in *Brians 1 Prison* consisted of 32 single-occupancy cells, with four cells used for isolation purposes, and on the day of the visit accommodated 22 inmates. The cells provided a similar standard of accommodation as those in *Quatre Camins Prison*. The department also contained an association room and a classroom, three outdoor exercise yards and offices for interviews and medical consultations. There was also a special department in the separate women's prison within *Brians 1 Prison*, which was accommodating some 15 prisoners at the time of the visit. The material conditions were adequate.

In *Modelo Prison*, the special department was located in gallery n° 6, and held over 50 inmates at the time of the delegation's visit. Despite being somewhat dilapidated, like the rest of the establishment, the single-occupancy cells provided an adequate standard of accommodation in terms of size, access to natural light and ventilation.

95. Articles 93 and 94 of the 1996 Prison Regulations⁴³ provide a general framework for the regime for prisoners placed in special departments, notably the amount of time for outdoor exercise, association and programmed activities. For example, those prisoners under Article 93 enjoy a minimum of three hours of outdoor exercise in groups of no more than two inmates while prisoners under Article 94 enjoy a minimum of four hours of association every day in groups of five inmates. Both groups may have an additional three hours for scheduled activities.

At *Quatre Camins Prison*, the CPT's delegation noted that there was a dedicated team of staff to support prisoners accommodated in the DERT, composed of four educators, two teachers, two psychologists, a criminologist and a sports instructor. This team worked with the prisoners in preparing them to reintegrate into ordinary prison accommodation. Prisoners subject to a regime under Article 93 were allowed to exercise outdoors in groups of two for up to three hours every day and could also follow educational classes and other programmes on a weekly basis. Prisoners subject to Article 94 could associate and take their outdoor exercise in groups of five (or more) for up to four hours every day. In addition, they could follow courses and classes during weekdays.

The opportunities available to prisoners in the special department in *Brians 1 Prison* were more limited. Prisoners were offered the possibility of two hours of outdoor exercise every day, but there were few organised activities available and there was no gym. Prisoners subject to a regime under Article 94 could in principle associate together, in groups of no more than four, in a room with several tables and chairs and a television. However, the delegation met one prisoner who had been denied the possibility to associate for nearly seven months (the situation of the prisoner was compounded by the current minimal interaction between prison staff and prisoners).

In *Modelo Prison*, inmates placed in the special department were offered access to outdoor exercise every day, but there were no organised activities on offer.

⁴³ Prisoners considered "dangerous" would be placed under a regime governed by Article 93 of the Prison Regulations (PR), and it appeared that, in general, prisoners did not spend more than 9 months on such a regime. They would then be subject to the regime referred to in Article 94 of the PR, which consisted of two distinct phases, and would have to spend a minimum of six months under such a regime but often considerably longer. Prisoners deemed "unadapted to an ordinary prison regime" would usually spend three to six months on the closed regime subject to Article 94.

96. The CPT has already recommended to the Spanish authorities in previous reports that the regimes offered to prisoners in special departments be developed. Notably, such prisoners should enjoy a relatively relaxed regime within their detention unit, by way of compensation for their severe custodial situation. In particular, they should be able to meet their fellow prisoners in the unit and be granted a good deal of choice about activities. The existence of a satisfactory programme of activities is just as important - if not more so - in a high security unit as on normal location. It can do much to counter the deleterious effects upon a prisoner's personality of living in such a unit. The activities provided should be as diverse as possible (education, sport, work of vocational value, etc.).

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

The CPT recommends that the authorities take the necessary steps to improve the activities and support on offer to prisoners in special departments, particularly those of Brians 1 and Modelo prisons, in the light of the above remarks.

The CPT would like to be informed as to the reasons why the prisoner referred to in paragraph 95, subparagraph 3, above is not permitted to associate with other prisoners.

97. The special departments in Brians 1 and Modelo Prisons also accommodated prisoners undergoing segregation as a disciplinary measure, which does not appear to be consistent with the applicable legal provisions. A dedicated special regime unit permits prison staff assigned to that unit to have a more positive perception of the inmates concerned and contributes to improving relations between staff and prisoners, as well as facilitating the delivery of developed regimes. **The CPT recommends that prisoners subject to a special regime should not be held in the same unit as prisoners undergoing segregation as a disciplinary measure.**

98. As to contacts with the outside world, the CPT considers it very important for prisoners to be given the opportunity to maintain their relationships with their family and friends, and especially with their spouse or partner and their children. Prisoners in special departments in the prisons visited were offered a 40 minute closed visit (i.e. through a Perspex screen) once per week and the possibility of a family visit every two weeks or of one long visit once a month (2 hours for Article 93 prisoners and 3 hours for Article 94 prisoners). Prisoners could make an eight minute phone call once a week, with two such calls being allowed for Article 94 (phase 2) prisoners.

However, the delegation did receive several complaints from prisoners, accommodated both in special departments and in ordinary modules, about their inability to make phone calls or to send letters due to a lack of financial means. **The CPT would appreciate the comments of the authorities on this matter.**

99. The placement of a prisoner on a special regime is proposed by the Treatment Board of the Prison. In the light of a serious incident, it will meet to consider whether a prisoner should be classified as a Category One prisoner and placed on a special regime. A formal proposal is submitted to the Director of the Prison Administration in Barcelona and the prisoner can appeal the decision to the Supervisory Judge for the prison. A review of the status of the prisoner is carried out every three months and if the prisoner is deemed to be making progress (cf. Article 92 of the Prison Regulations), the Treatment Board can recommend a less restrictive regime.

The DERT at Quatre Camins Prison has a dedicated treatment team of professionals allocated to support the prisoners on a special regime. Regrettably, the special departments at Brians I and Modelo Prisons did not have such an approach. This meant that prisoners did not know what was expected of them in order to progress through the special department and back onto an ordinary prison module. Decisions on the advice of the Treatment Board to extend their time under a special regime were delivered to them without any prior consultation or discussion, nor with any specific reasoning provided. Even in the DERT, with its dedicated treatment team, there appeared to be an inadequate consultation process with the prisoners.

The CPT recommends that prisoners placed on a special regime be more actively consulted during the three monthly review process and that, where appropriate, prisoners be provided with greater support to assist them in preparing to return to an ordinary regime.

d. female prisoners

100. The CPT's delegation visited the separate women's unit within Brians 1 Prison, which has a capacity of 200 prisoners and was accommodating some 186 women at the time of the visit. The L-shaped unit comprised three accommodation wings, a special department, workshops and classrooms, a dining area and a large outdoor exercise yard.

The material conditions of the unit were of an adequate standard. However, the delegation observed the difficulties of accommodating women together without being able to differentiate them in a way similar to that in operation for male prisoners. Many women told the delegation that the lack of differentiation, resulting in all types of prisoner being mingled together regardless of their needs and the challenges they posed, contributed to a sense of insecurity and fear. The only option for differentiation when problems arose was transfer to the special department. Introducing an effective differentiation, with accommodation in separate wings and the availability of more than one exercise yard, would not only facilitate the lives of many female prisoners but should improve the ability for staff to manage and support prisoners throughout their prison sentences.

The CPT recommends that the authorities examine the possibility of providing differentiated conditions for female prisoners.

101. As to the regime, efforts were being made to provide a range of activities despite the limitations of the unit. A large arts and crafts room and five classrooms were utilised for educational and vocational courses (cooking, sewing, home care for the elderly) and there was a production workshop employing 45 women doing piecework. A team of maintenance workers was also observed cleaning and painting the unit during the visit. Care should be taken to avoid only gender stereo-typical activities being offered to female prisoners. **The CPT encourages the authorities to continue to develop the range of purposeful activities available to female prisoners at Brians 1 Prison.**

102. Mention should also be made of the innovative programme being run by the drug-dependency unit (DAE), where a therapeutic environment was provided with 24 places for women who had contracted to remain drug-free. The multi-disciplinary support team included a psychologist, three educators, and a fixed team of prison officers not in uniform, as well as the services of a lawyer. The women engaged in group-work and classes on drug dependence and in activities such as jewellery making and cooking meals for themselves. They were, in effect, responsible for their own space. Each woman signed a contract to abstain from drugs and there was automatic drug testing every two days; however, if a woman succumbed to using drugs, but owned up, she would not be expelled from the unit. The delegation gained a positive impression of the programme.

The CPT would like to receive the authorities' views on the effectiveness of this programme and to be informed whether such an approach is likely to be expanded to other prisons.

103. The delegation also visited the small women's unit in Girona Prison, which consisted of three cramped accommodation cells, a multi-purpose cell (admission, disciplinary isolation, doctor's consultations) and a small common area with a table, chairs and two exercise bikes. At the time of the visit, the unit accommodated eleven women, two of whom were on remand. Over and above the restricted conditions, it was evident that the women were largely neglected by the prison administration. There were no purposeful activities on offer, no support or information to assist them upon entry into the unit and a general lack of amenities.

The CPT recommends that the authorities ensure that women held in Girona Prison are offered appropriate material conditions and are able to participate in purposeful activities.

e. health-care services

104. As was the case during the CPT's previous visits, the delegation found that the medical services available to inmates in the prisons visited were generally of an acceptable standard. However, this largely favourable situation was marred to some extent by certain shortcomings similar to those observed in the past⁴⁴. Further, the delegation was unable to undertake a full assessment of the health-care services as it was prevented from having access to medical records in Girona, Modelo and Quatre Camins Prisons (cf. paragraph 7).

⁴⁴ See CPT/Inf (2007) 28, paragraphs 92 to 95.

105. In the four establishments visited, the number of generalist medical staff was on the whole satisfactory⁴⁵ and the care provided in this field appeared adequate.

The delegation was told that a brief medical examination was carried out upon admission, usually within a few hours of a prisoner's arrival. It noted that a particular effort was made in the area of prevention as regards infectious diseases, and was informed that the approach by the medical services was proactive. The CPT welcomes the efforts made in this field.

However, the delegation noted that the health-care services played no role in supervising the catering arrangements (quality, quantity, preparation and distribution of food) and the conditions of hygiene (cleanliness of clothing and bedding; access to running water; sanitary installations). **The CPT recommends that the health-care services in prisons play an active role in such health promotion activities, acting in conjunction with the competent authorities as appropriate.**

106. The CPT has consistently stressed that 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.

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

However, from individual cases considered it appeared that practice varied somewhat and it was not at all clear that the reports were always being transmitted to the supervisory judges. Further, the delegation was informed by medical staff that doctors did not draw up any conclusions on the injuries sustained by prisoners; such a practice was confirmed by an examination of the medical files at Briens 1 Prison.

The CPT reiterates its recommendation 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 (including as to the consistency between allegations made and the injuries observed); this information should be made available to the prisoner and to his or her lawyer. In addition, the information should be brought to the attention of the competent judicial supervising authority. The same approach should be followed whenever a prisoner is medically examined following a violent episode in the prison.

⁴⁵ For example, at Briens 1 Prison, with a prison population of 1,680, there were eleven general practitioners, eleven qualified nurses and twenty assistant nurses.

107. From the medical files that the delegation was able to examine, it was assured that the computerised personal medical filing system provided the possibility to easily maintain records in a confidential and comprehensive manner. However, certain basic data appeared to be lacking such as the place where medical consultations were carried out and the health-care staff member involved, as well as information pertaining to the occurrence of fixation or the sustaining of injuries. Consequently, it was not surprising that there were no statistics on prison pathology or injuries.

The CPT recommends that steps be taken to remedy the lacunae in the data entered into the computerised medical files, in the light of the above remarks.

f. other issues

i. *discipline*

108. The CPT has stressed in the past that disciplinary procedures in Spanish prisons are highly developed and surrounded by a number of formal safeguards (in particular, the requirement that proceedings be served on prisoners in writing; the possibility to be assisted by a third party, including a lawyer; the possibility to present evidence and the requirement that a decision declaring evidence inadmissible be motivated; the possibility to appeal, including - in respect of issues related to fundamental rights - to the Constitutional Court; etc.). However, the CPT is interested in the practical application of these safeguards.

109. In accordance with Article 243 of the 1996 Prison Regulations, a prisoner may be provisionally placed in an isolation cell following an incident until the treatment board meets to decide whether a disciplinary sanction should be imposed. Prior to the board meeting, an “instructor” is charged with ascertaining the facts of the case and interviews the prisoner(s) concerned as well as relevant staff members. The resultant report is submitted to the board and the prisoner is allowed to express his/her opinion before a decision is taken. The board may impose a sanction of up to 14 days in isolation which, with the approval of the supervisory judge, may be extended by a further 14 days (see Article 108 of the 1996 Prison Regulations).

110. The CPT’s delegation met a number of prisoners in the segregation units at Brians 1 and Quatre Camins Prisons who claimed that they were not given an opportunity to meet with the “instructor” to give their side of the story prior to the board meeting. Further, it appeared that a number of prisoners received a sanction of isolation of up to 12 days or more for “insulting” prison officers. Such a sanction would appear to be disproportionate. Nevertheless, it fits with a general pattern observed by the delegation in the prisons visited, particularly Brians 1, that prisoners who challenged the system (including by making complaints) were considered “troublesome” and, consequently, were dealt with harshly.

The CPT recommends that all disciplinary punishments should be governed by the principle of proportionality and imposed in full compliance with the relevant formal procedures. Further, prisoners should never be punished for making complaints.

111. Material conditions of detention in the segregation units visited were generally acceptable. However, in Quatre Camins the segregation cells were dilapidated and dirty; further, given that each cell held two prisoners, the toilets should be partitioned. **The CPT recommends that the necessary steps be taken, in the light of the above remarks.**

As regards the regime, inmates undergoing the measure of disciplinary isolation were allowed writing material and reading matter. Such inmates also retained their right to have contact with the outside world (i.e. to send and receive letters, and to receive visits), and were offered at least two hours of outdoor exercise every day.

ii. prisoners on protection

112. The CPT recognises that it may, at times, be necessary to remove prisoners from the general prison population and place them in separate accommodation for their own protection. As a rule, such separation should be for as short a period as possible and all appropriate measures taken to facilitate the reintegration of the inmate into the general prison population, either in the same or another establishment.

In Quatre Camins Prison, the first floor of the segregation wing accommodated prisoners who had been placed on protection in accordance with Article 75 of the Prison Regulations; at the time of the visit there were 18 prisoners on protection. With minor differences, such as the right to have their own television and radios, these prisoners were held in conditions similar to those prisoners undergoing a disciplinary sanction in the segregation unit. The cells were in a similarly poor state, as described above. Activities were virtually non-existent, and access to a small outdoor exercise yard was for only two hours a day, as it was shared with the prisoners in segregation.

113. The CPT considers it essential for prisoners placed on protection to be provided with appropriate conditions and treatment; access to activities, educational courses and sport should be guaranteed. Moreover, there needs to be a more proactive approach by the prison health-care service towards prisoners on protection, particularly as regards psychological and psychiatric care. For example, the delegation met two prisoners on protection with serious emotional problems sharing a cell; one was an alienated older man who did not want to have anything to do with the prison system, refusing to ask to go to the yard or for a razor to shave. The other prisoner was a young drug addict who, having recently lost his baby son, had suicidal tendencies⁴⁶. These two prisoners were left “under protection” to care for each other. In the CPT’s view, this represents an abdication of the responsibility of the prison authorities for the welfare of prisoners on protection, and hence a failure of a duty of care.

The CPT recommends that the authorities take the necessary steps to improve the conditions of detention and the regime, as well as the treatment, offered to prisoners placed on protection, in the light of the above remarks.

⁴⁶ It should be noted that this prisoner was afraid of talking to prison staff about being depressed because he thought their reaction would be to fixate him again.

iii. staff issues

114. The CPT wishes to re-emphasise the great importance it attaches to the adequate recruitment and training of prison staff. There is arguably no better guarantee against ill-treatment than a properly recruited and trained prison officer, who knows how to adopt the appropriate attitude in his or her relations with prisoners. In this regard, developed interpersonal communication skills are an essential part of the make-up of such staff. Such skills will often enable prison staff to defuse a situation which could otherwise turn into violence. More generally, they will lead to a lowering of tension and raising of the quality of life in the institution concerned.

The delegation gained the impression that most staff were attempting to carry out their duties to the best of their abilities. However, it also seemed that in Briens 1 Prison and, to a lesser extent, in Quatre Camins and Modelo Prisons, staff were not suitably prepared to manage difficult prisoners. The allegations of ill-treatment and intimidation, and the excessive resort to fixation, are an indication of this unpreparedness.

115. The Catalan authorities informed the delegation that the selection and training of prison staff was a key component of the prison reform process. Newly recruited staff now follow a four month course and the recruitment process includes psychological, aptitude and physical tests, which did not exist at all as recently as 2003. This is positive and the CPT trusts that the recruitment process and training courses will continue to be developed to ensure that prison officers are suitably skilled to meet the particularly arduous challenges of the job. However, it is also imperative that in-service training be provided to prison officers who have not benefited from any initial training, and that there are refresher courses for all staff throughout their career.

The CPT recommends that the authorities ensure that all prison staff, both newly recruited and serving, are provided with the necessary training and skills to perform their tasks professionally.

iv. complaints and supervision

116. The CPT's delegation met many prisoners, particularly at Briens 1 and Quatre Camins prisons, who stated that they had no confidence in the existing complaints system. They claimed there was a lack of acknowledgement or follow-up to the concerns raised by prisoners on the side of the prison administration or the supervisory judge. **The CPT recommends that the authorities ensure prisoners receive written acknowledgement of every complaint they make, whether addressed to prison management or to the supervising judge, as well as a response, whether positive or negative.**

117. The CPT has in the past examined the role of the supervisory judge (“*juez de vigilancia penitenciara*”) and the key role this person plays with regard to safeguarding the rights of prisoners and correcting abuses. However, it was evident, in the prisons visited, that the judge was not able to effectively safeguard the rights of prisoners given the wide range of the judge’s functions⁴⁷ and the heavy workload which resulted therefrom. As was the case in previous visits, discussions with both staff and prisoners in the establishments visited suggested that the judges spent the bulk of their time with administrative matters and responding to requests, and rarely visited the detention areas or entered into direct contact with the prisoners. Such an impression was reinforced during talks with one of the judges covering the prisons visited.

It is particularly important that the supervisory judge should examine closely the use of means of restraint and the disciplinary process. This implies not only a post-facto examination of the relevant documentation but regular visits to the units where such measures are carried out and direct contact with the prisoners and prison staff concerned. Despite repeated recommendations along these lines since the first periodic visit in 1991, it would appear that the Spanish authorities have yet to address the concerns raised by the Committee.

In the CPT’s view, the extensive workload of the supervisory judge, notably in relation to sentence determination and appeals, renders the practical application of the inspection and oversight duties unrealistic and hence ineffective.

The CPT recommends that the authorities review the functioning of the current system of prison inspections and complaints by supervising judges to ensure that it can effectively safeguard the rights of prisoners.

Further, the CPT encourages the authorities to introduce other independent monitoring mechanisms empowered to carry out regular visits to prisons as well as to receive – and, if necessary, to take action on – prisoners’ complaints.

v. *foreign nationals*

118. In all the prisons visited foreign nationals made up some 30-40 % of the prison population⁴⁸ and yet it appeared that little effort was made to assist them in integrating into the prison system. Although the delegation was assured that all prisoners spoke enough Spanish to understand the rules and make themselves understood to staff, the CPT’s delegation met a number of prisoners, male and female, who clearly did not speak or understand Spanish. Most felt that they were discriminated against because of their lack of Spanish in terms of access to activities and privileges. Moreover, a number of these prisoners who had ended up in difficulties believed it was due to the language barrier and their inability to communicate with prison staff (for example, see paragraph 87ii above).

The authorities need to make additional efforts to ensure that relevant documentation exists in the most common languages of the countries from which foreign prisoners derive. Further, efforts should be made to ensure that there are designated staff members whom foreigners can approach for assistance.

⁴⁷ See Article 76 of General Organic Law on Prisons.

⁴⁸ On 12 September 2007, out of a total Catalan prison population of 9,363 some 3,678 were foreign nationals.

The CPT recommends that the authorities take the necessary steps to provide support to foreign nationals entering the Catalan prison system, in the light of the above remarks.

vi. involvement of prisoners in identity parades

119. At Brians 1 Prison, the CPT's delegation was informed that a video-conference system had been installed, enabling courts in Barcelona to use prisoners for identity parades. The CPT has doubts about the involvement of prisoners in such a process and would like to receive further information on the reasons for the involvement of prisoners (and whether they are also remunerated and the manner in which they are selected) and whether staff members are also invited to participate in such identity parades.

3. Establishments under the authority of the Ministry of Interior of Spain

120. As referred to at paragraph 75, the CPT's delegation visited the special departments and segregation units in the following prisons:

Madrid V Prison (Soto del Real), which opened in 1995, was visited by the CPT in 1998⁴⁹. At the time of the 2007 visit, the prison held 1,838 inmates (1,461 men and 377 women), of whom 1,322 were on remand. The prison included a special closed regime unit (Module 15).

Nanclares de la Oca Prison, near Vitoria, was built as a labour camp during the Spanish Civil War and has been operating as a prison since 1981. The four modules for men and one for women are spread over a series of two-storey buildings. With an official capacity of 557 places, the establishment accommodated 641 inmates (585 men and 56 women), of whom 63 were on remand, at the time of the visit. The prison contained two special departments: one for women and one for men.

San Sebastian Prison (Martutene), built in 1948, consisted of three symmetrical wings leading off each side of a central corridor (to a so-called "telephone pole" design). With an official capacity of 157 places, at the time of the visit it accommodated 325 prisoners (299 men and 26 women), of whom 83 were on remand. The prison possessed a small segregation unit.

a. ill-treatment

121. At Madrid V and San Sebastian prisons, those persons with whom the CPT's delegation spoke made no allegations of ill-treatment by staff.

⁴⁹ See CPT/Inf (2000) 5, paragraph 47 ff.

At Nanclares de la Oca Prison, on the other hand, a few prisoners alleged that prison officers had subjected them to ill-treatment, consisting mainly of punches and blows with a truncheon or a large book to various parts of the body, either before or after being restrained to a bed in a special department. Most of these allegations referred to incidents occurring more than six months prior to the visit. However, the delegation met a prisoner while he was fixated who alleged that, prior to being fixated (for the second time in 24 hours), he was punched in the mouth by a prison officer. The prison doctor noted in the inmate's medical file that he: "presents erosion on inferior lip, light swelling of right hand and contusion mark; no further assistance necessary". The injury to the lip, which was also observed by the delegation, is consistent with the allegation of ill-treatment.

The CPT calls upon the competent authorities to deliver a clear message to custodial staff at Nanclares de la Oca Prison – and reiterate it regularly – that all forms of ill-treatment of prisoners are unacceptable and will be the subject of severe sanctions.

b. means of restraint

122. In the section above concerning prison establishments in Catalonia, the CPT has examined in some detail the issue of resort to means of restraint, and in particular to fixation, which is a subject of particular concern to the CPT, bearing in mind the risk of abuse and ill-treatment.

At Nanclares de la Oca Prison, the delegation received several allegations of inmates being fixated for many hours face down in a supine position, with the wrists attached with metal cuffs and the ankles with straps to a specially adapted bed in one of three security rooms in Module 5 (special department for men) or, in the case of women, to an ordinary bed in an observation cell in Unit 4 (special department for women). The registers on restraints indicated that, during the year prior to the visit, resort to fixation had occurred 39 times.

By contrast, resort to fixation did not appear to occur at Madrid V Prison and it was far less common in San Sebastian Prison, where records indicated that fixation had been applied on three occasions in 2007. Nevertheless, the reasons for resort to fixation, its duration, the methods employed, the supervision and the recording of the measure were not defined in any of the establishments visited.

123. The permissible means of control or restraint are set out in law⁵⁰. Thus, temporary isolation, physical force, truncheons, "appropriate sprays" and handcuffs may be applied for the purpose of preventing escapes or acts of violence, to avoid harm by inmates to themselves or to other persons or property, or to overcome active or passive resistance by prisoners to orders issued by prison staff in the exercise of their duties.

However, no specific written instructions on the resort to fixation were ever issued in the prisons where fixation was applied. The delegation, having observed the extensive use of fixation at Nanclares de la Oca Prison, requested that the director specifically set out in writing a brief explanation of the criteria and procedures regulating fixation in his prison.

⁵⁰ See Article 45 of the General Organic Law on Prisons and Article 72 of the Prison Regulations.

124. According to the director's written explanation, only in cases of extreme self-harm (e.g. the inmate repeatedly bangs his head violently against the wall or bed) would fixation (with handcuffs⁵¹) be necessary. In order to guarantee the effectiveness of the measure, and for reasons of comfort and safety, the inmate is handcuffed face down by the wrists to the bed-rails and if necessary also by the ankles, first with handcuffs, then with cloth straps. The delegation had the opportunity to observe this practice (see paragraph 121).

125. However, it would appear that this criterion of extreme self-harm was not rigorously applied in practice and that fixation had occurred for punitive reasons. Over the 12 months prior to the visit, the register on restraints recorded at least 9 incidents of combined isolation and fixation which referred to violent behaviour towards a staff member or another inmate, or disobedient or disrespectful behaviour towards a staff member, with no mention of any attempt or threat of self-harm. By way of example, one person was isolated and fixated for over 15 hours between 4 and 5 July 2007 for insulting, threatening and attempting to physically assault prison officers.

126. Most recorded instances of fixation concerned periods of many hours, often spanning an entire night. By way of example, the person mentioned in paragraph 121 was fixated for 14 hours (and, a few hours later, again for 4 hours). Several persons interviewed alleged that during their period of fixation they were not released to go to the toilet and, as a result, had been obliged to urinate on the bed, soiling their clothes.

Further, the register on the means of control and restraint contained an example of the recurrent night-time application of fixation over a period of five days to a prisoner who posed a suicide risk. Such a practice would suggest that fixation is used to compensate for low staffing levels during night shifts.

127. In accordance with the regulations⁵², the prison's doctors visited persons subjected to a measure of isolation, which included fixated prisoners, on a daily basis. However, in none of the cases examined was the decision to apply fixation based on medical grounds or ordered by a doctor.

Further, the delegation was told by the director that the supervision of fixation was carried out regularly by prison officers, whereas persons whom the delegation met had no recollection of having been checked on during the period of fixation. Moreover, no running record was kept which would attest to the frequency of the staff member's checks or any relevant observation by the staff member.

A computerised register was in use regarding the application of all permissible means of control and restraint. However, the recording of the application of fixation was neither rigorous nor detailed. For example, the beginning and/or the end of the fixation was not always specified and there was no record of any supervisory visits.

⁵¹ The restraints equipment available in Module 5 included 4 sets of handcuffs and the only set of ankle straps in the prison. Other standard equipment permitted under Article 123 (1) of the Prison Regulations and present in the equipment store included truncheons and CS gas. This latter item was previously criticised in the reports on the CPT's visits to Spain in 1991 (at paragraph 107) and April 1994 (at paragraph 105).

⁵² See Article 72.2 of the Prison Regulations.

128. The CPT recommends that the Spanish authorities adopt a comprehensive approach towards the regulation of resort to fixation in all prison establishments in Spain in which it is used, taking into consideration the principles and minimum standards laid out in paragraph 91 above.

- c. prisoners detained in special departments and segregation units

129. In the course of the 2007 visit, the CPT's delegation again examined the position of inmates, both on remand and sentenced, who are considered to be "extremely dangerous" or "unadapted to an ordinary prison regime", i.e. prisoners subject to the provisions of Article 10 of the General Organic Law on Prisons. The special departments in which such prisoners were held also accommodated persons subjected to some form of segregation, whether disciplinary (Articles 243 and 254, Penitentiary Rules), for good order (Article 72.1), under the general provision concerning regime limitations (75.1) or for protection against others or against self-harm (75.2). Further, it would appear that certain prisoners were also placed in special departments by virtue of their classification under "FIES" (see paragraph 140).

130. At the time of the visit, Module 15 at *Madrid V Prison*, with separate wings for women and men, accommodated 30 persons (23 men and 7 women). Module 15 was in a good state of hygiene and repair. The single-occupancy cells were of a sufficient size (10.5m²), were adequately equipped and had good access to natural light and ventilation. However, the module's stark environment was accentuated by the absence of a communal activity area, except for the rather drab exercise yards.

At the time of the visit to *Nanclares de la Oca Prison*, 14 persons were placed in Module 5, which included an admissions or transit section, adjacent to the isolation or disciplinary unit for men. The segregation unit (Unit 4) in the women's section of the prison consisted of 6 cells, three of which allowed for mutual observation through very large windows as a suicide-prevention measure. Two persons were being held in the Unit for disciplinary segregation at the time of the visit. The cells in both of the sections were of a reasonable size and had adequate access to natural light and ventilation. However, material conditions were very poor, with dilapidated furniture and dirty sanitary equipment. Further, several inmates in the men's section complained of the presence of rodents, due to which they were obliged to hang their possessions in plastic bags.

San Sebastian Prison had a unit of 10 cells used primarily for disciplinary segregation, and was accommodating two persons on disciplinary isolation at the time of the visit. The unit offered very poor material conditions, with no equipment provided apart from a bed and a chair. Conditions in the rest of this very old establishment were also mostly dilapidated. However, it should be noted that, despite this state of affairs, the prison did not suffer from an oppressive environment.

The CPT recommends that steps be taken to remedy the above-mentioned shortcomings, as regards material conditions in the special departments and segregation units of the establishments visited.

131. The existence of a satisfactory programme of activities is just as important – if not more so – in a special unit than on normal location. It can do much to counter the deleterious effects upon a prisoner's personality of living in a bubble-like atmosphere of such a unit. In the response to the CPT's report on the 2003 visit, the Spanish authorities had indicated their intention to improve the regime for inmates held in special units⁵³.

In this respect, the CPT noted the adoption, in February 2007, of the *Protocol on the implementation of treatment programmes for prisoners placed in closed regimes*⁵⁴, the spirit and content of which do address some of the CPT's concerns⁵⁵. With the aim of ensuring prisoners' eventual progression to the ordinary detention regime, the Protocol prescribes a varied daily programme of activities, giving priority to individual and group therapy, education and sports, but also including occupational workshops and cultural activities. The Protocol includes a system of mentorship, incentives, and sanctions. A trial period for this programme was to run from February to November 2007, after which the effectiveness and efficiency of the system was to be assessed.

132. In practice, however, the CPT's delegation observed that regime activities were, on the whole, very poor in all of the prisons visited. Inmates had little or no opportunity to spend the day constructively. In particular, the maximum 3 hours of daily group activities foreseen by the 1996 prison regulations were not provided to persons classified as extremely dangerous and those classified as unadapted to the ordinary regime were not offered the prescribed 4-hour minimum of daily group activities.

At Madrid V Prison, despite the fact that the trial period for the above-mentioned Protocol had officially been launched in Module 15 in mid-July, only certain very limited activities were on offer. At the time of the visit, 6 prisoners were involved in weekly 90-minute sessions with a psychiatrist in groups of two. One prisoner also participated in weekly computer training; however, the prisoner was separated by bars from the instructor and the computer terminal. Further, prisoners might be deprived of access to reading material for several months, and for no apparent reason. Such limited activities cannot be considered to constitute an adequately varied programme as provided by the Protocol and recommended by the CPT.

133. Opportunities for association with other inmates in the units visited were strictly limited to, at most, access to outdoor exercise with one or two other inmates. The time allowed for outdoor exercise was generous. However, with the exception of San Sebastian Prison, where one of the normal prison yards was used, the exercise yards of all of the units visited were mostly devoid of equipment.

134. As regards contact with the outside world many prisoners complained of lengthy delays - more than one month at Madrid V Prison - in receiving correspondence due to the censorship applicable to them, and of delays of up to one week in the delivery of newspapers.

The CPT notes the efforts made by the authorities at local level to offer good conditions for visits, in particular in providing new visiting facilities at Nanclares de la Oca Prison and a welcoming environment in the facilities for family and conjugal visits at San Sebastian Prison.

⁵³ See CPT/Inf (2007) 29, at page 29.

⁵⁴ *Protocolo de actuacion del programa de intervencion con internos en regimen cerrado.*

⁵⁵ See, for example, the report on the CPT's visit in 2003 (CPT/Inf (2007) 28, paragraphs 79 to 82).

Prisoners subject to special regimes were not excluded from these various visit opportunities. This is a reflection of the central authorities' positive attitude towards visits. In particular, inmates at Module 15 of Madrid V Prison were allowed to receive one weekly visit for 40 minutes, in addition to one monthly conjugal visit and one open family visit (once a month for persons unadapted to the normal prison regime and once every three months for persons classified as extremely dangerous).

NGOs are specifically mentioned in the February 2007 closed regime Protocol as entities which could be called upon for support and assistance in the development of treatment programmes. However, none appeared to be active in Module 15. A priest did visit the section regularly, and for certain prisoners who received no other visits, this fortnightly closed visit was their only contact with the outside world.

135. The CPT recommends that the Spanish authorities spare no effort in developing the regime activities offered to all prisoners placed in a special department. Further, the Committee would like to be informed of the results of the evaluation of the above-mentioned Protocol.

136. The delegation noted that there were scarcely any contacts between staff and prisoners in Module 15 at Madrid V Prison, other than through bars. Indeed the highly automated door-opening system in place created impediments to human contact. As the CPT has emphasised in the past⁵⁶, such an approach is not conducive to the building of positive relations between staff and prisoners which may not only reduce the extent of prisoners' isolation, but also help maintain effective control and security, in the interests of safety, including for staff. **The CPT reiterates its recommendation that efforts be made to improve the quality of staff-prisoner relations in special departments.**

137. At Madrid V Prison, it would appear that placement in a special department was mainly based on the charges laid, with no real ongoing assessment of the person concerned. Such placements were formally reviewed every three months by the prison administration. In practice, however, it would appear that very few persons were ever re-classified to an ordinary regime; several persons interviewed in Madrid V Prison stated that their placement had been continually renewed and they were not provided with information as to the reasons for the renewal, nor as to the conditions which would have to be fulfilled in order to progress out of a special department and into an ordinary regime.

The delegation met some prisoners, particularly in Module 15 at Madrid V Prison who, as a result of continuous renewals and the combination of overlapping classifications and regimes, were held in long-term, continuous, near-total isolation. Most of those present in Module 15 had been in the department for several months or more (many of them having been transferred from another prison's special department), and one woman for two and a half years.

⁵⁶ See the CPT's report on its visit in 2003 (CPT/Inf (2007) 28), at paragraph 82.

The CPT recommends that prisoners be involved in the review process concerning their placement in a special department and that clearly defined objectives and goals be agreed upon to enable a prisoner to be re-classified to an ordinary regime.

138. As regards prisoners placed on protection, the delegation once again found the material conditions and/or the regime offered to them to be inadequate, as they were, in practice, subject to virtually the same regime as persons subject to a closed regime classification in a special department. They should not be placed in special departments. Instead, the CPT considers it essential for them to be provided with appropriate conditions and treatment; access to activities, educational courses and sport should be guaranteed. Moreover, there needs to be a more proactive approach by the prison health-care service towards prisoners on protection, particularly as regards psychological and psychiatric care.

The CPT recommends that the necessary steps be taken to improve the conditions of detention and the regime offered to prisoners placed on protection, in the light of the above remarks.

139. As the CPT has stated in previous reports, in order to reduce the stigma associated with closed regimes, disciplinary sanctions should not be served even in a distinct section of a special department. The CPT is not convinced by the argument advanced by the Spanish authorities, pointing to a lack of appropriate alternative accommodation for isolation⁵⁷. **The CPT recommends that the necessary steps be taken to ensure that prisoners subject to disciplinary sanctions are not placed in the same department as prisoners subject to a closed regime classification in a special department.**

d. inmates included in “FIES”

140. As mentioned in paragraph 129 above, the delegation encountered instances of prisoners whose placement in special departments would appear to be linked solely to their inclusion in “FIES”, the “register of inmates for special supervision”⁵⁸. The CPT is aware that this should not normally be the case. Revised security instructions regarding “FIES”, issued in February 2006⁵⁹ and provided to the CPT, state that “measures involving limitations on rights or on regime should not be based on the person’s inclusion in FIES, but rather on the inmate’s personal circumstances which require measures for the protection of other rights, or safeguarding the security or order of the establishment or the interests of treatment.” The instructions also go on to explain that “such personal circumstances can be established by the concurrence of features typical of a group of inmates or of an organisation”. **The CPT requests information on the criteria for the regimes applied to, and the eligibility for certain sentencing options of, persons included on the “FIES” register. Further, the Committee would like to know what are the “features typical of a group of inmates or of an organisation” which can establish the “personal circumstances requiring measures involving limitations on rights or on regime”.**

⁵⁷ See Spanish response to CPT report on the visit in 2003 (CPT/Inf (2007) 29), at pages 29-30.

⁵⁸ *Fichero de Internos de Especial Seguimiento*. See also CPT report on the April 1994 visit, paragraphs 110-112, as well as CPT (2007) 11, paragraph 15, and the Spanish authorities’ response, at pages 5-6, in respect of the January 2007 visit.

⁵⁹ Instruction 6/2006 of 22 February 2006.

The above-mentioned security instructions also refer to a set of appendices (which were not provided to the CPT), concerning, inter alia, security measures and rules on “closed regime”, control and the prevention of incidents. **The Committee requests a copy of appendices 2-4 of the “FIES” instructions.**

e. health care services

141. In general terms, the CPT is pleased to note that the standard of health-care provided to prisoners in ordinary regimes in the prisons visited was good, and included access to essential specialist services. Many prisoners were able to receive an equivalence of care to the level generally available in the national health-care system, including the national drug prevention and treatment programme. This is a positive situation.

Further, psycho-social treatment, with an individualised approach, was also provided to prisoners who required it, particularly at San Sebastian Prison.

142. In Madrid V and Nanclares de la Oca Prisons, the health care staffing levels were, on the whole satisfactory, and included a 24-hour nursing presence seven days per week. However, at San Sebastian Prison no health-care staff was present at nights between 21h30 and 8h30 and over the entire weekend, a doctor being on call during those hours.

The CPT recommends that health care staffing at San Sebastian Prison is reviewed, in order to ensure a 24-hour presence of nursing staff.

143. At San Sebastian and Madrid V Prisons, however, access to a doctor for inmates in the respective segregation unit or special department did not fulfil the requirements of confidentiality, as prison officers were present during consultations. Medical consultations at San Sebastian Prison were also at times conducted while the prisoner was handcuffed.

The CPT recommends that the Spanish authorities take the necessary steps to ensure that medical examinations of inmates held in special departments or segregation units are conducted out of the hearing and – unless the doctor concerned expressly requests otherwise in a given case – out of the sight of non-medical staff. Further, prisoners should not be handcuffed during medical examinations.

144. The delegation observed that medical screening on admission to the prisons visited was prompt and thorough in terms of many aspects of preventive health care, treatment for drugs, etc. However, in the delegation’s view, the screening lacked the detail required to be effective in terms of the prevention of ill-treatment. During past visits the CPT had noted the good practice which had developed in this area pursuant to a 1998 Prison Administration circular emphasising the need for the judicial authorities to receive information necessary for the better discharge of their oversight role.⁶⁰ However, since February 2007, a new computer system was implemented at Madrid V Prison which, surprisingly, no longer recorded whether or not prisoners bore injuries on arrival.

⁶⁰ See, in particular, the report on the CPT’s ad hoc visit in December 2005 (CPT/Inf (2007) 30), at paragraph 35.

The CPT calls upon the Spanish authorities to review the medical screening process on arrival in the prison system, so as to include a standardised recording of whether or not prisoners bear injuries on arrival. In particular, any signs of violence observed when a prisoner is medically screened on his admission must be fully recorded, together with any relevant statements by the prisoner and the doctor's conclusions (including as to the consistency between allegations made and the injuries observed); this information should be made available to the prisoner and to his or her lawyer. In addition, the information should be brought to the attention of the competent judicial supervising authority. The same approach should also be followed whenever a prisoner is medically examined after a violent episode in the prison.

145. Article 254, paragraph 1 of the 1996 Prison Regulations requires prison doctors to visit prisoners subject to the disciplinary sanction of isolation on a daily basis and to report to the prison director on the physical and psychological state of the prisoner, indicating whether it is inadvisable for the disciplinary measure to be applied. Thus the doctor's role is, indirectly, to approve, on a daily basis, the prisoner's fitness for continued isolation (see also paragraph 127).

The CPT wishes to stress that medical practitioners working in prisons act as the personal doctors of prisoners, and ensuring that there is a positive doctor-patient relationship between them is a major factor in safeguarding the health and well-being of prisoners. Obliging prison doctors to certify that prisoners are fit to undergo punishment is scarcely likely to promote that relationship. The revised European Prison Rules ("EPR") state that prison doctors should be very attentive to the situation of prisoners placed in disciplinary cells and that they should report to the director of the prison "whenever it is considered that a prisoner's physical or mental health is being put seriously at risk by continued imprisonment or by any conditions of imprisonment, including conditions of solitary confinement."⁶¹ As the CPT commented in its 15th General Report, the way the revised EPR tackled the thorny issue of the role of the prison doctors in relation to disciplinary matters represented a significant step forward: "The issue is dealt with in a medical rather than disciplinary framework and in a generic manner, covering all prisoners held under conditions of solitary confinement; the possibility is left open for the daily visit to be carried out by a qualified nurse rather than the doctor; and, perhaps most importantly, the doctor is no longer required to advise the director whether termination or alteration of a punishment measure is necessary, but instead has a general duty to report to him whenever a prisoner's health is being put seriously at risk by continued imprisonment or any condition of imprisonment."⁶²

The CPT recommends that the role of prison doctors in relation to disciplinary matters be reviewed, in the light of the above remarks.

⁶¹ See Committee of Ministers' Recommendation Rec (2006)2 on the revised European Prison Rules (Rules 43.2 and 43.3).

⁶² See 15th General Report on the CPT's activities, CPT/Inf (2005) 17, paragraph 53.

f. supervision

146. In accordance with Article 76 of the General Organic Law on Prisons, supervisory judges have a broad range of responsibilities in supervising the implementation of custodial sentences and safeguarding prisoners' rights, including conducting visits to penitentiary establishments. During the 2007 visit, the delegation noted once again that, due to an accumulation of tasks and a lack of human resources, supervisory judges were not visiting prisoners in the accommodation units or even the special departments or segregation units of the prisons visited. **The CPT calls upon the Spanish authorities to ensure that supervisory judges are encouraged to visit the whole of the prison's premises when carrying out their duties and to enter into contact with both prisoners and prison staff.**

147. The CPT also notes that, in respect of prisoners whose remand detention order or sentence has been delivered by the Audiencia Nacional, the role of supervisory judge has, since 2003, been removed from the supervisory judge competent for the relevant prison and vested in the Audiencia Nacional⁶³. The Committee is doubtful whether the same authority competent for determining a person's criminal responsibility is also best placed to perform the full range of supervisory tasks provided in Article 76 of the General Organic Law on Prisons, such as, in particular, deciding on conditional release, sentence remission, and appeals against regime classifications.

The CPT would like to be provided with a detailed account of the manner in which the Audiencia Nacional has, since the reform, carried out all aspects of its task of supervising those categories of prisoners.

⁶³ See Organic law 5/2003 of 27 May establishing Central Courts for Penitentiary Supervision.

C. Unaccompanied Foreign Minors

1. Preliminary remarks

148. The CPT's delegation visited a centre for male unaccompanied foreign minors, located near the town of La Esperanza in the north of the island of Tenerife. The centre, known as DEAMENAC⁶⁴ La Esperanza, Hogar I and II Schools, is one of four such facilities established by the regional government of the Canary Islands since March 2006.

The centres are envisaged as a short-term emergency measure until such time as the minors can be transferred to long-term housing facilities, known as CAME⁶⁵, each of which accommodate only some 12 children. Minors sent to the centre near La Esperanza cannot leave it without the permission of staff, and unauthorised absences are reported to the police, who will seek to apprehend the minors and return them to the centre.

149. DEAMENAC La Esperanza is situated in a three-storey former detention centre for juvenile offenders, in a forest in the hills above the town of La Esperanza. At the time of the visit, two separately administered centres (Hogar I and II Schools) were being run out of the same complex. Hogar I School accommodated 77 boys, the vast majority of whom were 16 and 17 years old, although there were also several 13 and 14-year old boys. Hogar II School was still in the process of becoming fully operational, having been re-opened on 19 September 2007⁶⁶, and was accommodating 70 boys, of a similar age structure, all of whom had arrived less than a month before the delegation's visit. The boys mainly originated from countries of North and West Africa, with the majority coming from Morocco, Senegal and Gambia.

The running of both centres had been sub-contracted to a non-governmental organisation, the "Asociación Solidaria Mundo Nuevo". Nevertheless, the competent regional authorities remain under a duty to ensure that the sub-contracted NGO is provided with sufficient resources in order to guarantee decent living conditions and to provide appropriate treatment for the boys placed in the centres. Further, it goes without saying that the authorities should not relinquish their regulatory responsibilities in respect of these centres. **The CPT trusts that the Spanish authorities subscribe to these precepts.**

150. The reason for locating two separately run centres within the same building was not clear. A centre composed of a series of small units with distinct core staff teams catering for the different ages and needs of the minors, with a central administrative structure, would appear preferable. Such an approach would also facilitate the ability of the centre to expand or contract, both in terms of accommodation as well as in terms of offering a range of purposeful activities, according to the number and ages of unaccompanied minors arriving on the island. By contrast, the impression gained by the delegation when it visited the two centres was one of disorganisation, lack of planning and an inefficient use of the meagre resources available.

The CPT would appreciate receiving the comments of the authorities on this matter.

⁶⁴ *Dispositivo de Emergencia de Atención de los Menores no acompañados en Canarias.*

⁶⁵ *Centros de Agocida para Menores Extranjeros.*

⁶⁶ Some 10 days prior to the visit by the CPT's delegation.

151. The delegation received no allegations of recent ill-treatment by staff in the two centres visited. This is to be welcomed as the CPT's visit to this facility was spurred by detailed reports of alleged ill-treatment of minors by staff in the course of 2006. Apparently, the situation had improved considerably following a comprehensive change of staff earlier in the year.

2. Living conditions

152. The boys were accommodated in rooms holding 2 to 16 beds (many of the multi-occupancy rooms were crowded⁶⁷ with, for example, 10 beds in 27m²). Most of the rooms were in a state of dilapidation, with windows either missing panes of glass or unable to be shut properly; one room was missing an inner section of bricks on the outer wall (thus reducing any insulation) while another had an electrical socket exposed, hanging out of the wall. Further, the building and many of the rooms retained the security features from its previous use, such as gated stairways and corridors, heavy metal doors and iron bars on windows. The rooms were sparsely furnished and the boys had no lockers or cupboards in which to keep their personal belongings. Many of the boys complained about the lack of heating and that there had been no hot water until the day prior to the delegation's visit.

The boys were issued certain basic clothing items, including sandals and sometimes sports shoes, depending on donations. However, many of the boys complained about the cold and the lack of warm clothing. In this respect, the delegation also noted the lack of blankets.

On a positive note, the delegation observed that the food appeared both nutritional and of sufficient quantity.

The CPT recommends that the authorities take the necessary steps to improve the living conditions at the DEAMENAC facility, notably:

- **to thoroughly renovate the accommodation areas, including the dismantling of security features of a carceral character and ensuring that the accommodation rooms are not crowded;**
- **to ensure that there is a constant supply of hot water and adequate heating;**
- **to ensure that all minors are supplied with adequate clothing for all seasons, and sufficient blankets.**

153. As regards activities, in theory the boys were offered some three hours of language or vocational classes every morning and further classes in the afternoon (handicrafts, gardening, language). At weekends, educational or beach outings were organised. In reality, the vast majority of boys were idling away their time with no opportunity to undertake purposeful activities. The delegation observed that between 10h00 and 13h00 and from 14h00 to 19h00, the boys were locked out of their rooms and were confined to the outdoor exercise yards (surrounded by high walls), where they were left to their own devices, which consisted of sitting around or playing football.

⁶⁷

There were also several unoccupied rooms filled with several bunk beds in anticipation of further arrivals.

In Hogar I School, the classroom was dirty and dilapidated and devoid of any pedagogical aids, such as maps or a blackboard. By contrast, in Hogar II School there was a properly equipped classroom and several rooms for workshops, but there were no organised activities due to a lack of staff. Moreover, the television in each centre was not connected and there were no other appropriate means of recreation (e.g. board games, table tennis). The only positive development was the possibility for a small number of boys to participate in local football and wrestling clubs, and for a few others to attend external computer and vocational courses.

The CPT recommends that steps be taken without delay to ensure that all boys placed in the DEAMENAC facility are provided with education and/or vocational training, in accordance with existing legislation⁶⁸. Moreover, the premises in which such activities are organised should be appropriate. Further, the authorities should ensure that sports and recreational activities are organised in both Hogar I and II Schools. It goes without saying that these recommendations apply equally to all other centres for foreign unaccompanied minors.

154. In respect of contacts with the outside world, minors are provided with a telephone card and are allowed to make phone calls once a week from a phone box outside the centre, as it is cheaper. In addition, minors are allowed to possess and use mobile phones.

155. As to health-care, an auxiliary nurse attended the Hogar I School from Monday to Friday, between 07h30 and 21h00. In contrast, in Hogar II School, an auxiliary nurse was only available three hours per weekday; **a re-deployment of the nursing staff to ensure that at least one nurse is present to cover both Schools every day of the week would be desirable**. The doctor from the local care centre visited the DEAMENAC facility when needed.

The CPT considers that there should be, at all times, at least one member of staff on duty in the DEAMENAC facility who is properly trained to provide first aid. Further, it would be more appropriate to have a single suitably-equipped infirmary serving both Schools rather than two poorly equipped ones, which exist at present. **The CPT recommends that the authorities take the necessary steps, in the light of the above remarks.**

3. Staffing issues

156. The shortage of staff in both centres was blatant. In Hogar I School, the daily staffing consisted of a manager, six educators and a translator, and at night there were three educators on duty. In addition, a social worker carried out para-legal functions, assisting minors with registration and the filing of applications for residence permits. In Hogar II School, the daily staffing level consisted of four educators, with oversight by the manager from Hogar I, on an interim basis.

⁶⁸ Article 9 of Organic Law 4/2000 (as amended) stipulates that every foreign national under 18 years of age has the right and duty to receive an education under the same conditions as Spanish citizens, including access to free compulsory primary education, to obtaining the corresponding educational qualifications, and to the public system of financial assistance and grants.

Staff appeared friendly and willing, but did not appear to possess the requisite qualifications for working with children. One notable exception was the translator who worked in both centres; he spoke several of the native languages of the boys, as well as Spanish, English and French, and was clearly a respected and trusted interlocutor for them. Staff were poorly paid and provided with minimal job security. Not surprisingly, working at the centres was considered an interim employment opportunity, with turnover high; none of the staff had been working at the centre for more than a few months.

157. The CPT wishes to recall that the staff in a centre for unaccompanied foreign minors should be carefully selected for their personal maturity and ability to cope with the challenges of working with - and safeguarding the welfare of - this multi-cultural young population. More particularly, they should be committed to working with young people, and be capable of guiding and motivating the children in their charge.

All such staff should receive professional training, both as preparation and induction and on an on-going basis, and benefit from appropriate external support and supervision in the exercise of their duties.

The CPT recommends that the authorities review the staffing situation, including the conditions of employment, in the DEAMENAC facility, in the light of the above remarks.

4. Other questions

158. A minor must leave a DEAMENAC facility upon turning 18 and, unless he has already obtained a residence permit, he will be arrested for being in Spain illegally and returned to his country of origin. A large proportion of the minors in the two centres visited were more than 17 years old and would not obtain a residence permit, which takes approximately nine months, before turning 18. Despite their needs being clearly different from the younger boys, no targeted assistance was being offered to prepare this category of minor for re-integration into their countries of origin. **The CPT would like to receive the comments of the authorities on this matter.**

APPENDIX I

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

I. Cooperation between the CPT and the authorities of Spain

recommendations

- appropriate steps to be taken to ensure that in the future effective access to medical files is guaranteed in all establishments that the Committee visits, as required by Article 8, paragraph 2 (d), of the Convention (paragraph 7).

II.A. Law enforcement agencies

Torture and other forms of ill-treatment

recommendations

- the Spanish authorities to ensure that a message of zero tolerance of ill-treatment of detained persons reaches all law enforcement officials at all levels and to reinforce that message with a statement at the appropriate political level (paragraph 20);
- the allegations of ill-treatment concerning the group of persons referred to in paragraph 16 to be duly investigated (paragraph 22);
- whenever persons brought before a prosecutor or judge allege ill-treatment by law enforcement officials, the prosecutor/judge should record the allegations in writing, order immediately a forensic medical examination (for cases where a forensic examination is not automatically provided) and take the necessary steps to ensure that the allegations are properly investigated. Such an approach should be followed whether or not the person concerned bears visible external injuries. Further, even in the absence of an express allegation of ill-treatment, the prosecutor/judge should request a forensic medical examination whenever there are other grounds to believe that a person brought before him could have been the victim of ill-treatment. If necessary, the relevant legislation should be amended accordingly (paragraph 23).

requests for information

- on the outcome of the criminal proceedings in the cases of A.* and B.* (paragraph 17);
- comments on the re-instatement in their duties of five of the six Mossos d'Esquadra officers suspended following allegations of ill-treatment of foreign nationals at "Les Corts" District Police Station (paragraph 19);
- on the outcome of the examination of the cases of alleged ill-treatment referred to in paragraph 16 (paragraph 22).

* In accordance with Article 11, paragraph 3, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, certain names have been deleted.

Incommunicado detention

recommendations

- the Spanish authorities to review the current legislation, in order to ensure that a person placed in incommunicado detention has the right to have a person of his choice informed of his detention and whereabouts at the earliest possible moment, and in no case later than 48 hours after the moment when he was first deprived of liberty (paragraph 27);
- the Spanish authorities to take the necessary steps to ensure that persons detained incommunicado are allowed to meet a lawyer in private, from the outset of their detention (paragraph 28);
- written forensic medical reports to be produced by the doctor and delivered to the judge (paragraph 35);
- the Spanish authorities to ensure that all persons held incommunicado enjoy the right to be examined by a doctor of their own choice (paragraph 36);
- the Spanish authorities to establish clear rules on the way in which interviews by law enforcement officials are to be conducted (paragraph 40);
- the rules on interviews by law enforcement officials should expressly prohibit the blindfolding or hooding of persons who are in police custody, including during interviews (paragraph 40);
- forcing detained persons to conduct physical exercises or to stand for prolonged periods should be prohibited (paragraph 40);
- the Spanish authorities to take the necessary steps to ensure that record-keeping in the context of incommunicado detention by law enforcement officials is substantially improved, in the light of the remarks outlined in paragraphs 41 to 42 (paragraph 42);
- detained persons held incommunicado to be properly informed about their legal situation and rights (paragraph 43);
- the relevant legislation (and instructions) to be amended without delay so as to prohibit the application of the incommunicado regime to minors (paragraph 46);
- persons subject to the provisions of Article 520 bis of the Code of Criminal Procedure (CCP) to be systematically physically brought before the competent judge prior to the taking of a decision on the issue of extending the period of detention beyond 72 hours. If necessary, the relevant legislation should be amended (paragraph 49);
- the General Council of the Judiciary to encourage judges to adopt a more proactive approach in respect of the supervisory powers granted to them by Article 520 bis, paragraph 3, of the CCP (paragraph 49);

- the relevant steps to be taken in the light of the remarks in paragraph 50 concerning video-recording of incommunicado detention (paragraph 50).

requests for information

- the comments of the Spanish authorities on the issues raised in paragraphs 30 to 33 concerning access to a doctor (paragraph 34);
- a full account of the detention of a minor who was held in custody for 38 hours at the Calle Guzman el Bueno premises, including whether the incommunicado regime was applied provisionally by the Civil Guard, whether it was subsequently judicially authorised, whether the detained person was hooded or blindfolded at any stage of the detention and from which rights he was able to benefit (paragraph 45).

Safeguards against ill-treatment (ordinary police custody)

recommendations

- the necessary steps to be taken to ensure that all persons detained in police stations are permitted to have a close relative or another third party of their choice informed of their situation and that they are subsequently informed as to whether such a communication had occurred (paragraph 54);
- the relevant legislation and implementing instructions to the law enforcement authorities to be amended, so as to make clear that the right of access to a lawyer applies as from the very outset of custody and includes the right to meet in private with the lawyer (paragraph 58);
- steps to be taken at “Les Corts” District Police Station and, if appropriate, in other police establishments in Spain, to ensure that all medical examinations are conducted out of the hearing and - unless the doctor concerned expressly requests otherwise in a given case - out of the sight of police staff (paragraph 59);
- an explicit requirement that arrested persons be requested to sign a statement attesting that they have been informed of their rights in a language they understand to be introduced in instructions to law enforcement officials (paragraph 60);
- steps to be taken to ensure that detained persons are provided with a copy of an information sheet about their rights, if necessary in a language other than Spanish which they can understand (paragraph 61);
- the Spanish authorities to take the necessary steps to guarantee frequent and unannounced visits to law enforcement agency detention facilities, by either substantially reinforcing the capacity of the existing bodies or establishing a new specialised independent authority (paragraph 64).

comments

- the Spanish authorities are invited to revise the computerised custody record system in such a way as to permit effective monitoring (paragraph 63).

Conditions of detention

recommendations

- conditions of detention in the National Police and Guardia Civil establishments visited to be reviewed and existing shortcomings remedied, having regard to the remarks made in paragraphs 65 to 67. Particular attention should be paid to cell lighting, ventilation and hygiene and the provision of mattresses at night; steps must also be taken to ensure that detained persons have ready access to decent sanitary facilities at all times, including at night. Further, if persons are detained more than 24 hours there should be provision of facilities for outdoor exercise (paragraph 68);
- the necessary steps to be taken either to improve significantly the conditions of detention at Barajas International Airport, including through the provision of an outdoor exercise yard, or to ensure that nobody is detained longer than 24 hours at the Airport's detention area for foreigners (paragraph 69);
- steps to be taken to remedy the deficiencies in the detention facilities of Mossos d'Esquadra establishments referred to in paragraph 71 (paragraph 71);
- the Spanish authorities to establish standards for law enforcement agency detention facilities, taking due account of the Committee's criteria; compliance with those standards and with instructions regarding conditions of detention should be effectively monitored (paragraph 74).

comments

- the official overnight capacity in St. Feliu de Llobregat Municipal Police Station should be reduced from nine persons to four (paragraph 72);
- the main defect in the detention facilities at St. Feliu de Llobregat Municipal Police Station was an absence of access to natural light (paragraph 72);
- only very few cells in the Ertzaintza establishments visited had access to natural light and there was no provision for outdoor exercise (paragraph 73).

requests for information

- confirmation that the construction of the new detention area of the Guardia Civil's Central Section of the Information Service at Calle Guzman el Bueno in Madrid will comply fully with the CPT's standards, in particular as concerns access to natural light, ventilation and the provision of facilities for outdoor exercise (paragraph 68).

II.B. Prison establishments

1. Preliminary remarks

recommendations

- the Spanish authorities to continue vigorously to pursue multi-faceted policies designed to put an end to overcrowding in prisons, having regard *inter alia* to the principles set out in Recommendations R (99) 22 and R (2003) 22 as well as other pertinent Recommendations of the Council of Europe's Committee of Ministers (paragraph 78);
- the authorities to re-double their efforts to reduce the overcrowding and improve the conditions of detention in Modelo Prison (paragraph 79).

requests for information

- detailed information on the measures being taken by the Spanish authorities to put an end to overcrowding in prisons (paragraph 78).

2. Establishments under the authority of the Department of Justice of the Autonomous Regional Government of Catalonia

Torture and other forms of ill-treatment

recommendations

- the Catalan authorities to deliver to staff at Brians 1 Prison, at regular intervals, the message that all forms of ill-treatment, including verbal abuse, are not acceptable and will be the subject of severe sanctions (paragraph 83);
- prison officers at Brians 1 Prison, and in other establishments, must be made fully aware that the force used to control violent and/or recalcitrant prisoners should be no more than is strictly necessary and that once prisoners have been brought under control there can be no justification for them being struck (paragraph 83);
- the necessary steps to be taken to ensure that medical examinations are carried out in accordance with the approach outlined in paragraph 84 (paragraph 84);
- prison staff to receive a clear message that any kind of threats or intimidating action against a prisoner who has complained, or attempts to prevent complaints or requests from reaching the relevant supervisory bodies, will not be tolerated and will be severely punished (paragraph 85).

requests for information

- about the outcome of the investigations and court procedures concerning prison staff members involved in the cases of alleged ill-treatment in relation to events at Quatre Camins Prison in October 2004 (paragraph 86).

Means of restraint

recommendations

- the authorities to take the necessary steps to ensure that all the principles and minimum safeguards set out in paragraph 91 are applied in all prison establishments resorting to fixation (paragraph 91).

Prisoners subject to special regimes

recommendations

- the authorities to take the necessary steps to improve the activities and support on offer to prisoners in special departments, particularly those of Brians 1 and Modelo prisons, in the light of the remarks in paragraph 96 (paragraph 96);
- prisoners subject to a special regime should not be held in the same unit as prisoners undergoing segregation as a disciplinary measure (paragraph 97);
- prisoners placed on a special regime to be more actively consulted during the three monthly review process and, where appropriate, prisoners to be provided with greater support to assist them in preparing to return to an ordinary regime (paragraph 99).

requests for information

- as to the reasons why the prisoner referred to in paragraph 94, subparagraph 3, is not permitted to associate with other prisoners (paragraph 95);
- comments of the authorities concerning complaints from prisoners, accommodated both in special departments and in ordinary modules, about their inability to make phone calls or to send letters due to a lack of financial means (paragraph 97).

Female prisoners

recommendations

- the authorities to examine the possibility of providing differentiated conditions for female prisoners (paragraph 100);
- the authorities to ensure that women held in Girona Prison are offered appropriate material conditions and are able to participate in purposeful activities (paragraph 103).

comments

- the authorities are encouraged to continue to develop the range of purposeful activities available to female prisoners at Brians 1 Prison (paragraph 101).

requests for information

- the authorities' views on the effectiveness of the programme for women being run by the drug-dependency unit (DAE) at Brians 1 Prison and whether such an approach is likely to be expanded to other prisons (paragraph 102).

Health-care services

recommendations

- the health-care services in prisons to play an active role in health promotion activities, acting in conjunction with the competent authorities as appropriate (paragraph 105);
- 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 (including as to the consistency between allegations made and the injuries observed); this information should be made available to the prisoner and to his or her lawyer. In addition, the information should be brought to the attention of the competent judicial supervising authority. The same approach should be followed whenever a prisoner is medically examined following a violent episode in the prison (paragraph 106);
- steps to be taken to remedy the lacunae in the data entered into the computerised medical files, in the light of the remarks in paragraph 107 (paragraph 107).

Other issues

discipline

recommendations

- all disciplinary punishments to be governed by the principle of proportionality and imposed in full compliance with the relevant formal procedures. Further, prisoners should never be punished for making complaints (paragraph 110);
- the necessary steps to be taken to improve material conditions in the segregation cells of Quatre Camins Prison, in the light of the remarks in paragraph 111 (paragraph 111).

prisoners on protection

recommendations

- the authorities to take the necessary steps to improve the conditions of detention and the regime, as well as the treatment, offered to prisoners placed on protection, in the light of the remarks in paragraph 113 (paragraph 113).

staff issues

recommendations

- the authorities to ensure that all prison staff, both newly recruited and serving, are provided with the necessary training and skills to perform their tasks professionally (paragraph 115).

complaints and supervision

recommendations

- the authorities to ensure that prisoners receive written acknowledgement of every complaint they make, whether addressed to prison management or to the supervising judge, as well as a response, whether positive or negative (paragraph 116);
- the authorities to review the functioning of the current system of prison inspections and complaints by supervising judges to ensure that it can effectively safeguard the rights of prisoners (paragraph 117).

comments

- the authorities are encouraged to introduce other independent monitoring mechanisms empowered to carry out regular visits to prisons as well as to receive – and, if necessary, to take action on – prisoners’ complaints (paragraph 117).

foreign nationals

recommendations

- the authorities to take the necessary steps to provide support to foreign nationals entering the Catalan prison system, in the light of the remarks in paragraph 118 (paragraph 118).

involvement of prisoners in identity parades

requests for information

- on the reasons for the involvement of prisoners in identity parades (and whether they are remunerated and the manner in which they are selected) and whether staff members are also invited to participate in such parades (paragraph 119).

3. Establishments under the authority of the Ministry of Interior of Spain

Ill-treatment

recommendations

- the competent authorities to deliver a clear message to custodial staff at Nanclares de la Oca Prison – and reiterate it regularly – that all forms of ill-treatment of prisoners are unacceptable and will be the subject of severe sanctions (paragraph 121).

Means of restraint

recommendations

- the Spanish authorities to adopt a comprehensive approach towards the regulation of resort to fixation in all prison establishments in Spain in which it is used, taking into consideration the principles and minimum standards laid out in paragraph 91 (paragraph 128).

Prisoners detained in special departments and segregation units

recommendations

- the shortcomings referred to in paragraphs 129 and 130 as regards material conditions in the special departments and segregation units of the establishments visited to be remedied (paragraph 130);
- the Spanish authorities to spare no effort in developing the regime activities offered to all prisoners placed in a special department (paragraph 135);
- efforts to be made to improve the quality of staff-prisoner relations in special departments (paragraph 136);
- prisoners to be involved in the review process concerning their placement in a special department and clearly defined objectives and goals to be agreed upon to enable a prisoner to be re-classified to an ordinary regime (paragraph 137);
- the necessary steps to be taken to improve the conditions of detention and the regime offered to prisoners placed on protection, in the light of the remarks in paragraph 138 (paragraph 138);
- the necessary steps to be taken to ensure that prisoners subject to disciplinary sanctions are not placed in the same department as prisoners subject to a closed regime classification in a special department (paragraph 139).

requests for information

- the results of the evaluation of the February 2007 closed regime Protocol (paragraph 135).

Inmates included in “FIES”

requests for information

- on the criteria for the regimes applied to, and the eligibility for certain sentencing options of, persons included on the “FIES” register. Further, the Committee would like to know what are the “features typical of a group of inmates or of an organisation” which can establish the “personal circumstances requiring measures involving limitations on rights or on regime” (paragraph 140);
- a copy of appendices 2-4 of the “FIES” instructions (paragraph 140).

Health care services

recommendations

- health care staffing at San Sebastian Prison to be reviewed, in order to ensure a 24-hour presence of nursing staff (paragraph 142);
- the Spanish authorities to take the necessary steps to ensure that medical examinations of inmates held in special departments or segregation units are conducted out of the hearing and – unless the doctor concerned expressly requests otherwise in a given case – out of the sight of non-medical staff. Further, prisoners should not be handcuffed during medical examinations (paragraph 143);
- the Spanish authorities to review the medical screening process on arrival in the prison system, so as to include a standardised recording of whether or not prisoners bear injuries on arrival. In particular, any signs of violence observed when a prisoner is medically screened on his admission must be fully recorded, together with any relevant statements by the prisoner and the doctor's conclusions (including as to the consistency between allegations made and the injuries observed); this information should be made available to the prisoner and to his or her lawyer. In addition, the information should be brought to the attention of the competent judicial supervising authority. The same approach should also be followed whenever a prisoner is medically examined after a violent episode in the prison (paragraph 144);
- the role of prison doctors in relation to disciplinary matters to be reviewed, in the light of the remarks in paragraph 145 (paragraph 145).

Supervision

recommendations

- the Spanish authorities to ensure that supervisory judges are encouraged to visit the whole of the prison's premises when carrying out their duties and to enter into contact with both prisoners and prison staff (paragraph 146).

requests for information

- a detailed account of the manner in which the Audiencia Nacional has, since the reform of 2003, carried out all aspects of its task of supervising the situation of prisoners whose remand detention order or sentence it delivered (paragraph 147).

II.C. Unaccompanied Foreign Minors

Preliminary remarks

comments

- the CPT trusts that the Spanish authorities subscribe to the precepts outlined in paragraph 149 (paragraph 149).

requests for information

- comments of the authorities on the reason for locating two separately run centres within the same building (paragraph 150).

Living conditions

recommendations

- the authorities to take the necessary steps to improve the living conditions at the DEAMENAC La Esperanza facility, notably:
 - to thoroughly renovate the accommodation areas, including the dismantling of security features of a carceral character and ensuring that the accommodation rooms are not crowded;
 - to ensure that there is a constant supply of hot water and adequate heating;
 - to ensure that all minors are supplied with adequate clothing for all seasons, and sufficient blankets (paragraph 152);

- steps to be taken without delay to ensure that all boys placed in the DEAMENAC facility are provided with education and/or vocational training, in accordance with existing legislation. Moreover, the premises in which such activities are organised should be appropriate. Further, the authorities should ensure that sports and recreational activities are organised in both Hogar I and II Schools. These recommendations apply equally to all other centres for foreign unaccompanied minors (paragraph 153);
- the authorities to ensure the presence at all times of a staff member who is properly trained to provide first aid, and to examine the possibility of a single suitably-equipped infirmary serving both schools (paragraph 155).

comments

- a re-deployment of the nursing staff to ensure that at least one nurse is present to cover both Hogar I and II Schools every day of the week would be desirable (paragraph 155).

Staffing issues

recommendations

- the authorities to review the staffing situation, including the conditions of employment, in the DEAMENAC facility, in the light of the remarks in paragraph 157 (paragraph 157).

Other questions

requests for information

- comments of the authorities on the lack of assistance to prepare 17 year old minors for re-integration into their countries of origin (paragraph 158).

APPENDIX II

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

A. Ministerial authorities

Ministry of the Interior

Mr Alfredo PÉREZ RUBALCABA, Minister for the Interior

Mr Antonio CAMACHO VIZCAÍNO, Secretary of State for Security

Ms Mercedes GALLIZO LLAMAS, Director-General of Penitentiary Institutions

Ms Maria Angeles GONZÁLEZ GARCÍA, Technical General Secretary

Mr Joan MESQUIDA FERRANDO, Director-General of the National Police and Civil Guard

Mr José Manuel GARCÍA VARELA, Deputy Director of the Civil Guard

Mr Gregorio MARTÍNEZ GARRIDO, Head of the Private Office of the Minister of the Interior

Mr Antonio CERROLAZA GÓMEZ, Deputy Technical General Secretary, CPT liaison officer

Mr Jesús FERNÁNDEZ CABALLERO, liaison officer

Office of the Representative of the Central Government in Catalonia

Federico CABRERO DAUNERT, liaison officer

María LÓPEZ SALVADOR, liaison officer

B. Other national authorities

Mr Carlos DIVAR BLANCO, President of the Audiencia Nacional

Mr Cándido CONDE-PUMPIDO TOURON, Prosecutor-General

Mr Enrique LOPEZ LOPEZ, member of the General Council of the Judiciary

Mr Carlos RIOS IZQUIERDO, member of the General Council of the Judiciary

C. Authorities of the autonomous communities

Autonomous Regional Government of Catalonia (Generalitat de Catalunya)

Mr Joan DELORT I MENAL, Secretary of Security

Mr Albert BATTLE I BASTARDAS, Secretary for the Penitentiary Service, Rehabilitation and Juvenile Justice

Mr Miquel TREPAT I CELIS, Director General of Penitentiary Services and Resources

Mr Oriol BONET I BOIXADERA, Head of Institution Support and Coordination, Penitentiary Service, Rehabilitation and Juvenile Justice

Mr Pere ALMEDA I SAMARANCH, Private Office of the Counsellor for Justice

Mr Rafael RIBÓ I MASSÓ, Catalan Ombudsman

Basque Country (Eusko Jaurlaritza)

Mr Javier BALZA AGUILERA, Secretary for the Interior

Mr Iñigo LAMARCA ITURBE, Ombudsman for the Basque Country

D. Non-governmental organisations

Coordinator of the Madrid suburbs

Coordinator for the Prevention of Torture

Justizia y Paz

Madrid Free Lawyers Association (ALA)

Observatory on the Prison System and Human Rights (OSPDH)