COUNCIL OF EUROPE CONSEIL DE L'EUROPE

CPT/Inf (2011) 12

Response of the Spanish Government

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

from 19 September to 1 October 2007

The Spanish Government has requested the publication of this response. The report of the CPT on its September/October 2007 visit to Spain is set out in document CPT/Inf (2011) 11.

Strasbourg, 25 March 2011

ANSWER OF THE SPANISH GOVERNMENT TO THE REPORT ISSUED BY THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT), REGARDING THE VISIT TO SPAIN CARRIED OUT BETWEEN SEPTEMBER, 19TH AND OCTOBER, 1ST 2007

I INTRODUCTION

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter the CPT) has sent to the Spanish Government its report corresponding to its visit to Spain carried out between September 19th and October 1st of the last year, in compliance with article 10 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

In the aforementioned report the CPT makes the recommendations and suggestions that, resulting from the information gathered during the visits carried out by the different CPT delegations, it wishes to address to the Spanish Government in order to comply with the standards established by the Committee.

In this perspective, the Government welcomes and takes note of the recommendations addressed that since the beginning of the visits carried out by the CPT delegations have been used as a guide in order to make improvements both at legislative and practical level with a view at fully complying with the Convention.

Here below the Government answers the various recommendations and suggestions made by the CPT, expressing general remarks concerning the two big topics of the CPT report and proposing a concrete answer to each and every comment addressed in the document.

II. GENERAL REMARKS.

The CPT delegation focused its analysis, essentially, on four main areas: access to (i) **torture and ill treatment cases**, (ii) **legal assistance to detainees under incommunicado detention**, (iii) **guarantees against ill treatment during the police custody of the detainee** and (iv) the need to **tackle prison overcrowding in Spain**.

As a result, the delegation examined the guarantees applied to those people who, according to article 55.2 of the Spanish Constitution, specified by the LECrim (Ley de Enjuiciamiento Criminal – it could be found henceforth referred to as LECrim), adopted by the Royal Decree of September 14th, 1882 and amended by the Revision Acts 4/1988 of may, 25th and 14/1983 (hereinafter the CCP) in its articles 520 bis and 527, are under incommunicado detention due to their involvement in crimes related to terrorism as well as to the efficacy of the investigation of possible ill treatments which may have occurred during the custody of such people in the centres of the national security forces.

On the other hand, the delegation visited various penitentiary centres within the Spanish territory, and special attention was given to the special departments, the disciplinary units and wards for inmates considered as “inadequate” to prison life.

Therefore, the report makes a set of evaluations and recommendations about these four main areas addressing situations that the CPT considers to be inadequate. This report will take into consideration the situations highlighted by the CPT and the analysis will follow the four areas-structure mentioned above, to which a fifth topic will be added concerning minor foreigners not accompanied.

III. SPECIFIC REMARKS.

Section 9. (Specially worrying issues for the CPT).

The CPT is especially concerned about the measures adopted by Spain in relation to the guarantees of the incommunicado detention, the access to legal assistance since the beginning of the police custody and prison overcrowding and informs that it could follow the procedure foreseen of the Convention (10) (2): public declaration without authorization of Spain.

In this perspective, and without prejudice to the further elaboration of these issues in the specific sections of this report, you will find here below a summary of the present situation and of the measures adopted by the Government concerning the following thee points:

a) Incommunicado detention.

This régime is applied in Spain to arrested persons as a preventive measure – article 520 bis in relation to article 384 bis of the Code of criminal procedure – authorized and supervised by the judicial authority – whose aim is not the person's isolation, but his/her separation from possible informants and outer links. The objective is to prevent that the arrested gets information which might have harmful effects on the judicial investigation.

The deprivation of the right of the person to have someone notified of the arrest and of the place of custody, in the case of highly organised armed or terrorist groups, aims at delaying as long as possible the spreading of orders and alarms through the established communication mechanisms which might facilitate the escape of the other members of the group or the destruction of the crime evidence.

The Spanish Government shares the CPT's conviction that the quick notification of the arrest to those designed by the person under arrest is an important guarantee in order to avoid ill treatment. However, the Government also considers that the guarantee established in our legal system is even stronger, provided that it foresees the permanent supervision of the judicial authority and the public prosecutor, who, since the very beginning are informed of the arrest, the place of custody and of the identity of the officials in charge of the case; furthermore, both the judicial authority and the public prosecutor have at their disposal all the means to carry out this control and can rely on the collaboration of legal doctor. They can also adopt at any time all necessary measures, such as to deny the incommunicado or to order to immediately bring the person before the judge.

In this respect, it is worth to remind that the incommunicado detention is carried out complying with all guarantees of an advanced rule of law. Its legal régime is highly restrictive, since it requires judicial authorization with statement of reasons which has to be released during the first 24 hours of the detention as well as a permanent and direct monitoring of the personal situation of the person arrested by the judge who ordered the incommunicado régime or by the examining magistrate of the judicial district where the person is held under custody.

Both the courts and the constitutional court, supreme judicial body in charge of the protection of the fundamental rights in our country, have decided as to the compliance of our legal system of incommunicado régime with the criteria of the International Conventions signed by Spain, thanks to the strict guarantees established by our legislation in this field, which go beyond the European standards.

However, in order to strengthen these guarantees and meet the recommendations of the international bodies for the protection of human rights, the Human Rights National Plan, which is currently being elaborated, includes the following actions directly affecting people under incommunicado arrest:

- the appropriate legal changes **to expressly prohibit the application of the incommunicado regime to minors** will be promoted.
- All necessary legislative and technical measures to ensure **the video recording of the stay within the police unit of the person under incommunicado arrest.**
- All necessary legal changes will be proposed **to ensure that the person can be examined not only by legal doctors but also by other doctors of the Public Health System** freely appointed by the head of the future National Mechanism for Torture Prevention.
- A **protocol on the implementation of the medical examination of the detainee**, including the minimum medical tests to be carried out by the legal doctor and the medical reports to be filled, will be approved.
- **The present regulation of the record and custody books** in the police units will be changed, in order to improve the information gathered and, in particular, to know exactly and at any time all events occurred from the arrest to the moment when the detainee was brought before the judge or released.

b) <u>Right to legal aid of the detainee.</u>

As regards the moment when the right to legal aid has to be implemented, article 540.2 of the Code of criminal procedure foresees that the counsel will appear as soon as possible in the centre of detention, in any case in a maximum delay of 8 hours after the notification of the detention to the bar.

In order to reduce as much as possible the wait time, the State Secretariat on Security Instruction 12/2007, concerning the behaviour required from the members of the national security forces to ensure the respect of the inmate or detainee's rights, established the following obligation:

"Special endeavour will be given to ensure that the right to legal aid is implemented according to the provisions of the legal system, using all available means to guarantee the presence of a counsel as soon as possible.

As a result, the request for legal aid will be immediately handled and sent to the counsel chosen by the detainee or to the bar; shouldn't the counsel show up within three hours, this procedure will be repeated.

In the call record book any call to the counsel or the bar will be registered, together with all possible incidents in the procedure such as impossibility to set up the call, no answer, etc."

However, with a view at improving the detainee's guarantees and meeting the recommendations of the international bodies for the protection of human rights, in particular the CPT, the Spanish Government is going to propose, in the framework of the Human Rights National Plan which is currently being elaborated, the modification of article 540.2 of the Code of criminal procedure to reduce the maximum delay of eight hours established to implement the right to legal aid.

c) General situation of the prison centres in Spain.

The Spanish Government is making a huge effort to renew and extend the penitentiary centres as well as to manage and adapt the available resources with a view at finding solutions to the deficiencies detected in our prison centres, following the recommendations of the CPT and according to the scheme explained in section III.4.1 of this report.

Although the complexity of the project – with horizon 2012 – and the size of the public works do not allow a definitive evaluation of the results until the end of the project, the Spanish Government is convinced that it will result in a significant improvement of life conditions in our prison centres.

- It is worth to emphasize the creation of five new mothers' wards designed for mothers serving sentences together with their children, with an aim at taking out children from the prison centres and promoting family life.
- Also with a view at improving our penitentiary system, priority is given to the development of the open regime and to the introduction of intervention programmes with inmates and persons under conditional release in order to facilitate their social integration.
- Finally, legal changes will be promoted to deal with the organisation of the penitentiary officers and adapt their status to the evolution of their tasks, as well as to update their functions and responsibilities and revise the need for both initial and continuing training.

Sections 10 and 11.

In these sections, the CPT refers to the questions addressed to the Spanish authorities during the visit in Spain; in particular, it refers to the closure of those cells visited in the Police Station of Puente de Vallecas, as well as to the adoption of the measures aimed at ensuring that the Guardia Civil records each and every phase of the detention, including the identity of the police officers and the exact conditions of the person under arrest.

In this respect, we would like to inform that the following measures have been adopted:

1) The Minister of Interior ordered the immediate closure of the detention facilities of the Police Station of Vallecas and their renovation.

2) A new Instruction of the State Secretary for Security which is currently being elaborated will urgently deal with the reform of the record and custody books in order to document the entire custody chain, recording each and every stage of the detention, including the identity of the police officer in charge in every moment and the exact conditions of the person under arrest.

III. 1 Torture and other forms of ill treatment.

The CPT report includes many sections dedicated to torture and other forms of ill treatment, as well as to the guarantees that need to be established or improved to prevent, avoid and fight against this kind of behaviours.

Sections 14 to 17.

In sections 14 to 17, the CPT refers to the alleged ill treatments it learnt of during its visit in Spain and that it investigated and related to the use of punches, kicks and other forms of force by the Spanish police authorities, including attacks of a sexual nature. Therefore, the Committee wishes to receive the information about the results of such actions.

In particular, the report indicates, in section 15, that *"a person stated that he/she was hit from behind, without any previous warning, by various officers of the Provincial brigade of the Judicial Police of the National Police in Madrid, and that these policemen kept on whacking, kicking and punching him/her for some minutes afterwards. The person was moved to the Police Station of the National Police of Tetuán, in Madrid, and six hours after to the La Paz hospital to treat the injuries on his/her face, back and other parts of the body; these injuries were once again noticed at his/her arrival at the Madrid V Prison Centre, on the 31st August 2007 and described in the medical report ("injury aid report"). Furthermore, the photo taken in the moment of the admission in the prison centre clearly shows a wide abrasion of the right cheek. The alleged ill treatments match with the medical evidence and the additional documents examined by the delegation"*.

First of all, it is important to highlight that the Spanish legal system includes a regulatory framework ruling each and every case of detention and this framework is article 520 of the Code of criminal procedure, establishing the list of the detainee's rights; these rights are specified and detailed by other articles of the mentioned act in relation to the procedures and steps to be followed. And this without prejudice to the limits to the rights of the detainee represented by the application of the incommunicado régime, according to the content of article 527 of the Code of criminal procedure.

In order to specify the content of this act, a set of police action protocols. These protocols include a Manual on "criteria to carry out judicial police inquiries" adopted by the National Commission of Judicial Police Coordination and its 8th chapter on "detention and rights communication" reflects the respect for the Spanish legislation as well as for the different international instruments in this field ratified by Spain such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention on Human Rights and the rest of legislative instruments of the United Nations, the recommendations of the UIPC-INTERPOL and the methodologies and standards of the European Union.

A similar content has the Instruction 12/2007 of September 14th, 2007 "on the behaviour required from the members of the national security forces in order to ensure the rights of the detainees other people under police custody", issued by the State Secretariat for Security and ruling the behaviour and action of the above mentioned forces in the implementation of their tasks.

Therefore, in order to analyse all the issues raised in this report, it is important to start from the legal framework that binds the action of the Spanish authorities taking part in the detention procedure to the principle of legality, that imposes a set of obligatory duties and action criteria and bans the implementation of any practice or measure constitutive of torture or other cruel, inhuman or degrading treatment.

But entering into the details of the concrete case referred to by the CPT in this section (paragraph 15), according to the dossier made, on August, 28th 2007 the police officers carried out inquiries leading to the accusation of the detainee and other three people, who were brought before the judge as alleged members of an organised group placing on the market counterfeited 200 euros banknotes.

In the moment of his arrest, the detainee put up resistance and the officers, who had previously identified themselves, were obliged to use minimum force in order to arrest and handcuff the person; in that moment the detainee was informed of the reasons for his arrest as well as of his rights in accordance with article 520 of the Code of criminal procedure. Afterwards, the detainee was moved to the local police station of Torrejón de Ardoz put in a cell, while the officers were waiting for the judge order issuing an enter and search warrant; once the officers had received the warrant, the person was moved to the local police station of Tetuán, in Madrid, and remained in the custody of the security service.

During his appearance before the police officers (Annex 1), and after he was informed of his rights, the detainee asked to be examined by a doctor; that is why the detainee was moved to the urgency department of the "La Paz" Hospital, were he was examined. The doctors wrote a medical report (Annex 1) containing the declarations of the detainee, who said he had been pushed and that as a result of that, he suffered back pain. The medical report refers a "contusion", as well as the detainee's denial to undergo radiography and the treatment proposed consisting in the administration of paracetamol.

As a result, both from the police inquiries and the medical report issued in the hospital where the detainee was voluntary examined the following conclusions can be clearly drawn:

- **First of all, that the acting officers strictly conformed the arrest to the criteria contained in the criminal regulation in force, ensuring throughout the entire procedure the detainee's rights.**
- **Secondly, that the use of force caused by the detainee's resistance in the moment of his arrest was literally "minimum" and "essential".** Both adjectives reveal that the use of force was not disproportionate; on the contrary, it was only aimed at controlling, as softly as possible, the person and carrying out his arrest.
- Thirdly, that both the diagnosis contained in the medical report ("contusion") and the medicine prescribed – a common pain reliever – reveal that **the injuries caused were coherent with the criteria of proportionality, subsidiarity and imperative need which have to drive the implementation of this kind of measures.**

On the other hand, the CPT also requests for clarification from the Spanish authorities on the facts referred to in section 15 of the report, occurred during the operations carried out by the "Guardia Civil" on March, 28th and April, 1st 2007 in the Basque Country and Navarre and in relation to which all people interviewed describe a common procedure of detention and removal to Madrid with a view at a 3 to five days detentions under the incommunicado regime, comprising ill treatment and intensive questioning.

First of all it is important to emphasize that during the incommunicado regime all detainees were treated correctly and accordingly with the legislation and the criteria established for this kind of measures. They were also examined by a doctor. (All circumstances of the case are clearly detailed in the report corresponding to paragraph 22).

However, the report is even more precise and refers concretely to a person indicating literally that "another person alleged that, while being arrested by an plain clothes police officer of the "16th Group" of the Provincial Brigade of the Judicial Police of San Sebastian, he was hit on the left side of his chin, and that this caused him inflammation and localised pain. The injury observed was coherent with such declaration".

The facts refer to the detention of a person by the officers of the "Provincial brigade" of the Judicial Police of San Sebastian on the ground of drug trafficking, who was brought before the judge on September, 20th 2007 and sent to prison as a result of an order of the Investigating Judge.

According to the sources interviewed, during his stay within the police station the detainee was in no way victim of ill treatment; on the contrary, he was duly informed of his rights, including the right to be examined by a doctor or other experts, but he renounced this right. Neither during his stay in the police station, nor on the occasion of his removal and appearance before the judge the detainee referred to the alleged ill treatment.

However, he declared having been victim of ill treatment on the occasion of the visit of the Committee for the Prevention of Torture on September, 19th and October, 1st 2007 to the Provincial Prison centre of Martutene; as a result of that, three officers of the "Provincial brigade" of the Judicial Police of San Sebastian who had taken part in the referred detention and inquiries were called to give evidence.

Once all inquiries and investigations were carried out, the judge, on January, 24th 2008 dismissed the case due to the lack of evidence as regards the existence of a crime of ill treatment or injuries against the detainee.

In the order, the judicial authority states that "neither the counsel who assisted the detainee during his declaration, nor during the appearance before the judge to resolve on his release or to declare before the investigating judge the detainee ever referred to the alleged request to see a doctor and his wish to report that a police officer had hit him on his chest while he was being handcuffed.

And the order carries on by stating that what has been said in the previous paragraph together with the officers' declarations who had participated in the arrest and search in the detainee's home, together with the head or authority in charge of the police station, lead to the conclusion that the case does not proceed to judgement, due to the lack of any kind of evidence backing somehow the detainee's declarations; therefore the judicial authority considers as proven the non-existence of the alleged ill-treatment and this conclusion is based not only on the lack of evidence, but more importantly on the lack of any minimum kind of evidence allowing the judge to draw the conclusion that the abuse did take place.

As a result, from the order issued by the judicial authority it can be clearly deduced the lack of both ill-treatment and formal complaint, not only during the detainee's stay in the police station, but also during his appearance before the judge.

Finally, in section 17 of the report, the CPT refers to the cases of alleged ill-treatment during the incommunicado regime perpetrated by the Guardia Civil against A.[*] and B.,[*] arrested on January, 16th 2008, in relation to whom the Committee "understands that criminal proceedings were instituted" and requests information concerning the results of these legal actions.

In this perspective, it is worth to highlight that both were arrested on January, 6th 2008 by Guardia Civil officers in the city of Mondragón under accusations of being members of the terrorist group ETA and having participated in various terrorist attacks, including the murder of two people.

After they were stopped, on January, 6th 2008 and while a device of the Rapid Action Group (RAG) was trying to identify them, both ran just when the officers order them to open their backpacks, in which afterwards two guns were found. The flight forced the officers to pursue and arrest them, but both put up strong and violent resistance, trying to get loose and avoid the detention; they kicked and punched and offered great resistance, and therefore the officers had to use physical force in order to bring them under control and finally handcuff them.

Later, the Central Court in charge of the investigation order the medical examination of the detainees by the doctor of the acting court responsible for the investigation of Guardia de San Sebastian (Guipúzcoa), who considered advisable to move one of them to the Donostia Hospital in San Sebastian, where he was admitted.

On the other hand, the other detainee also underwent three medical examinations that have been duly registered (on January, 7th at 9.30 am, on January, 8th at 10.56 am and on January, 9th at 11.20 am) but on all occasions nothing particular was reported.

While staying in custody of the Guardia Civil officers, the detainees were treated correctly and the behaviour of the officer was respectful with the legislation in force in Spain and the criteria to be followed in these kind of police actions. They were also examined by the legal doctor assigned to the court in Madrid and by the legal doctor of the court of Guardia de San Sebastian (Guipúzcoa) and received legal aid by the officially appointed lawyer. Still, we know that the detainees presented formal complaint for alleged ill treatment, and as a result of this the judicial authority is currently investigating the facts.

Given these facts, the relevant evidence proving that actions have been taken in relation to the formal complaint is that criminal proceedings were opened for both cases and the preliminary investigations carried out by the court nº 1 of San Sebastian. In the framework of these proceedings, investigators are gathering as much information as possible to establish if the Guardia Civil perpetrated ill treatment against the two aforementioned detainees. Furthermore, the proceedings include not only the declarations of the accused and of the Guardia Civil, but also the testimony of possible witnesses. On the other hand, during these investigations, various medical reports were requested.

[*] 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.

As regards the opening of criminal proceedings, the Code of criminal procedure (articles 773 and following articles) establishes that the Public Prosecutor shall prosecute directly or through the Judicial police on the basis of any information on facts that could be constitutive of crime; to which extent, the prosecutor will investigate the facts in order to clear them up and precise the responsibility of the participants in the crime. The law also establishes that the Public Prosecutor shall order the dismissal of criminal proceedings when facts cannot be considered as being constitutive of a crime, and this shall be communicated to the alleged victim, in order to allow her/him to present another formal complaint before the judge responsible for the pre-trial investigation. Otherwise, the prosecutor shall request from the judge the opening of the proceeding and forward the results of the investigation, presenting before him the detainee, if someone had been previously arrested for the facts, and the effects of the crime.

In addition, the Spanish legal system foresees the legal obligation of the police officers to gather as many testimonies and evidence as possible to clear up criminal offences, forwarding the results of the investigation to the judicial authority and/or to the disciplinary investigator, in accordance with (among others) article 282 and following articles, article 769 and following articles of the LECrim, and article 36 of the Royal Decree 884/1989 of July, 14th adopting the Disciplinary Régime Regulation of the National Police Corps.

Finally, as an additional guarantee, it is worth to highlight that according to article 25.1 of the correspondent regulation, the Ombudsman shall forward to the Public Prosecutor any information concerning the existence of possible crimes, if the Ombudsman does not know for a fact that criminal proceedings have been opened.

Section 18.

The CPT requests information concerning various cases of alleged ill treatment perpetrated against foreign detainee.

More precisely, a man declared having been whacked on his head, body and legs while lying on the ground after he had been put under control. During an examination carried out by a member of the delegation the doctor observed the existence of a puff in the fronto-parietal region of his head, blue reddish contusions as parallel stripes on his back, upper part of the left arm, right leg and external side of the left knee; in the opinion of the CPT, these injuries were coherent with the declarations of the detained.

The case the CPT refers to concerns a foreign citizen arrested by the Mossos d'Esquadra on September, 21st 2007 as a result of an arrest warrant registered in the Police Information System and issued by the court nº 31 of Barcelona carrying out the pre-trial investigation. At 9.10 am the detained was informed of his rights by handing him a standard form listing all his rights that he signed. After his removal to the Police station of Las Corts, the detained was placed in jail at 11.46 am, in the Detained Custody Area of Barcelona.

Furthermore, in compliance with the request of the detained to have somebody notified of the arrest, the person designated was phoned and the call was registered at 12.30 am as call nº 12138 within the Register Book of the Detained Investigation and Coordination Unit of Barcelona.

According to the computer application record as well as to the manuscript news book of the Custody and Detained Regional Unit, it is worth to focus on the following highlights:

1- At 13.38, only two hours after the detained was places in cell nº 14, he began injuring himself, hitting his head against the bars; at 13.38 the officers decided to bring him to the medical ward to calm him down and ensure that he could receive medical assistance.
2- While he was being moved to the medical ward, the detained kept on hitting his head against the wall and creating disturbance and the doctor, during the examination, was able to determine that the injuries on his forehead had been self-inflicted, stating this circumstance in the emergency aid report. After receiving medical assistance, the detained was sent back to his cell at 13.51.
3- Two hours later, at 16.14 and until 18.14, the detained did not calm down and kept on showing rage and behaving violently and from within the cell, he kept on creating great disturbance; the facts can be detailed as follows:

- At 16.14 the detained calls and kicks around in the cell.
- At 16.17 the detained climbs on the bars saying that he is a "monkey".
- At 16.28 he threatens the officers by saying they would meet outside and he would kill them with a Japanese sword.
- At 16.48 he goes on punching, insulting, shouting and he also spits at the officers.
- At 16.57 the detained spits all over the cell door.
- At 17.25 the head officer decide to move him to cell nº 35, a cell nearer to the control area reception and with a view at avoiding that other detained hear the knocks and shouts, which could alter the smooth running of the custody area.
- At 18.00 the detained seems to calm down, but 14 minutes later he starts again with the kicking.

4- At nightfall, the detained goes on shouting and hitting himself against the cell walls and when the police officers ask him to leave the cell for the description of the suspect, he refuses.
5- However, very early in the morning, at 4.30 the detained agrees to leave the cell for the description and at 4.43 he returns to the cell.
6- Once again, at 6.47 on September, 22nd, shortly before being brought before the judge, the detained injures himself, hitting his head against the cell walls; on September, 22nd the judge resolves that the detained has to be placed in jail.

According to the facts reported, the following conclusions can be drawn:

First of all, **that the behaviour of all members of the Generalitat Police – Mossos d'Esquadra has been monitored, and it has been as respectful as possible with the criteria of integrity and the prohibition of abusive, arbitrary or discriminatory conducts.**

Secondly, **that during his stay in the custody area, the police officer duly observed strict monitoring measures in relation to the aforementioned foreign detained, whose violent behaviour since his detention had alerted them; therefore, the police officer tried to avoid by all possible means that the detained could injure himself, with an aim at ensuring his physical integrity.**

Thirdly, **that it is clear that the injuries described in the frontal region of his head and other parts of the body (feet, legs, knees, back) were self-inflicted all day and night long during the period of custody.**

Finally, it is worth to highlight **that the members of the Mossos d'Esquadra did not insult the detained, nor the attacked him verbally and that despite his behaviour, they always looked after his honour and dignity.**

Section 19.

The CPT report also requests information concerning two incidents occurred on March and April 2007, when six police officers of the Mossos d'Esquadra attacked foreign citizens who had been arrested and placed in the police station of the Les Corts district; however, and despite what occurred, five of them had their duties re-established.

These facts were recorded by the recording system, secretly installed by the Catalan authorities as a result of previous accusations of ill treatment in that centre. The six officers involved were suspended until the end of the criminal investigation. However, despite this decision, apparently five of them were readmitted.

In fact, on April, 10th 2007, the Domestic Affairs Police Department of the Generalitat – Mossos d'Esquadra decided the opening of disciplinary proceedings against four police officers and a corporal as a consequence of the alleged aggression of a detained on March 31st of the same year in the Detention and Custody Area of the Police station of Las Corts in Barcelona.

The facts could be considered a serious matter due to their significance and possible infringement of fundamental rights; in addition, they might be considered as constitutive of crime. Therefore, the results of the investigation were forwarded to the Public Prosecutor of the Regional High Court of Cataluña, who would analyse if the police behaviour had been respectful with law.

From that moment and while awaiting a judgement which id res judicata, the Mossos d'Esquadra Unit paralysed the disciplinary proceeding and adopted the appropriate protective measures.

Therefore, with an aim at re-establishing the service and ensure the development of the proceeding, without prejudicing the possible sentence in the framework of the disciplinary proceeding, the resolution also ordered the provisional suspension of the police officers involved, as a preventive measure, in compliance with the Generalitat Police Act 10/1994 of July, 11th (75), revised by the Act 21/1998 of December, 29th, and with Decree 183/1995 of June, 13th (33.2) adopting the Disciplinary Régime Regulation of the Generalitat Police – Mossos d'Esquadra, modified by Decree 174/1999 of June, 29th.

After more than six months, the Head of Domestic Affairs Unit decided to apply for the lifting of the aforementioned preventive measures, due to the time passed since the facts had occurred and to the disappearance of the reasons justifying their adoption.

The preliminary investigation into this case had prolonged and was still open due to the complexity of the facts. **It has been argued that a longer suspension would have represented a sort of "*pre-judice sentence*", while sentence can only be issued by the judicial authority. On the other hand, the officers involved had been moved to another job centre and this prevented the risk of possible social damages.**

Finally, the results of the police investigation were able to guarantee that the lifting of the preventive measures would alter neither the normal operation of the services nor the further conduct of the disciplinary proceedings.

Sections 20 and 21.

In section 20 of the report, the CPT calls on the Spanish authorities to ensure that each and every officer of the security services gets the message of zero tolerance against ill-treatment and to reinforce this message through an appropriate political declaration.

In addition, section 21indicates that an example of message to be sent is the adoption of strong measures against those officers who perpetrate ill-treatment, due both to its significance as a deterrent and to the beneficial effects it has on victims the news that those officers responsible have been brought before Justice.

It is worth to highlight that **Spain, as democratic rule-of-law State, considers that ill-treatment by members of the National Security forces is an intrinsically reprehensible and unjustifiable behaviour, no matter what kind of legal description they deserve (humiliations, injuries, tortures, etc.).**

And this can be deduced from the membership of our country in the Council of Europe, its active collaboration when receiving the periodic visits of the Committee for the Prevention of Torture and from the international instruments against torture and ill-treatment ratified by Spain. As an example, the following documents can be quoted: the European Convention on Human Rights (article 3: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment"); the International Covenant on Civil and Political Rights (article 7: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation"); the New York Convention against Torture and other Cruel, Inhuman or Degrading Treatment, of 10 December 1984, ratified in 1987; the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, of 26 November 1987, ratified by Spain in 1989, creating a supranational and independent committee for the regular investigation of the practices of parties and members of the Council of Europe in this field. And since the 3rd March 2006, the Optional Protocol to the UN Convention against Torture that entered into force in our country on 2nd June of the same year, underlining that Spain was among the first twenty countries that ratified this instrument.

Provided that some of the CPT's recommendations in this part of the report have already been answered, it is worth to assume a primary element, which a quick reading of some paragraphs of the report might call into question: **Spain has established a serious legal framework which bans the practice of ill-treatment and therefore ensures the protection of human rights; this kind of conduct are absolutely exceptional among the National Security forces; however, that does not prevent the Spanish authorities giving up the effort to completely eradicate each and every case of such a behaviour.**

In fact, the national Spanish legal system is a clearly belligerent against this kind of conducts and behaviours. The **Constitution** establishes a strict system of human rights protection, including the right to life and to physical and moral integrity; this means, according to article 15, that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, and that death penalty is expressly abolished. This article, due to its place within the constitutional text, is specifically protected by a set of guarantees, mostly of a judicial nature (including the explicit protection before the Constitutional Court through the action for infringement of fundamental rights and freedoms due to orders, decisions and acts violating the aforementioned right).

Furthermore, the Spanish legal system also foresees the existence of other constitutionally relevant bodies that contribute to the investigation of possible acts of the Public Administration infringing human rights, such as the Spanish Ombudsman and other similar institutions existing in some Regions. The Ombudsman annual addresses to the Parliament a report representing a warning for the institutions involved. The details included, the extent of its investigation as well as the various recommendations that the Ombudsman makes represent a highly positive practice contributing to keep the attention on this kind of behaviours and promote their persecution.

From a criminal point of view, both the Criminal Procedure Act (its article 389 prohibit threatens or coercions against detained during their questioning) and the National Security forces Act (its article 5.3.b) orders that the officers ensure the respect for the life and integrity of those under their custody) represent another example of the Spanish commitment to prevent ill-treatment.

On the other hand, torture is defined as a crime in article 173 and ff. of the Spanish Criminal Code and its prohibition has been achieved through the implementation of various legal instruments in different fields, including the one concerning the National Security forces to which the CPT refers to in its report.

For instance, article 174 also punishes ill-treatment and torture both within a criminal proceeding or due to it, and the description of the crime includes even the preliminary investigations, even though they have been performed outside a judicial proceeding. Furthermore, when torture is serious the punishment includes not only imprisonment (2 to 6 years) but also a sentence of eight to twelve year total dismissal.

On the other hand, article 176 also describes the case of ill-treatment perpetrated not by an officer, but by a third party, with the permission of the former; in this case the sentence for the officer shall be equivalent to the punishment foresees for the person who has directly committed the crime.

Finally, article 177 establishes that “if ill-treatment implies not only a violation of moral integrity but also injuries or damages to the life, physical integrity, health, sexual freedom or any other asset of the victim or of a third party, these facts will be punished separately with the appropriate sentence, unless the aforementioned infringement is especially punished by law.

In this perspective, State officers are fully aware of their obligation to respect the rights that both the Constitution and the rest of the legal system recognise to the detainee and of the consequences of the infringement of such rights which could lead to the opening of a strict **disciplinary proceeding**, including the compulsory retirement. And this shall not be an obstacle to the communication of the facts to the Judicial authority in order to define any possible criminal responsibility.

The “zero tolerance” attitude against such behaviours also becomes evident in practice, in the field of both prevention and repression. This has been highlighted by the Government and other authorities through a set of measures aimed at reinforcing the validity of this message.

1. First of all, it is worth to underline that the promotion of fundamental rights and freedoms as well as the establishment of guarantees and protection mechanisms to ensure their respect and prevent their violation are **permanent criteria of the Spanish Government**.

In this perspective, the Ministry of Interior has always implemented the principle of “zero tolerance” against any possible infringement of constitutional rights and promoted investigation, transparency and cooperation with the other institutions – especially with the Judiciary – when the suspicion of violations arises.

Both the Ministry of Interior and the State Secretary highlight and ratify in their institutional declarations before the citizens, the Parliament and the members of the National Security Forces this principle as an absolute priority of the Government action. As an example, and for their importance and relevance in the field of human rights protection , we can refer to the declaration of the Ministry before the Congress on his own initiative on the so-called “Roquetas case” on August, 11th 2005 and the declaration of the State Secretary for Security before the Senate, on May 23rd of the same year.

Furthermore, these public and formal declarations of the heads of the Ministry of Interior have resulted in concrete measures. In fact, the Government has significantly reinforced the means at the disposal of the Ministry to ensure the compliance of the police service with the Law.

The system needs a set of appropriate mechanisms to determine whether the service to the citizens is being effectively and efficiently delivered and the implementation of some precise public policies, including the police function, complies with the legal system – including, among others, the conduct and ethic rules of the police which are regularly published in the “Behaviour Code of law enforcement corps and bodies officers” adopted by the UN in 1978, the “Declaration on Police” of the Parliamentary Assembly of the Council of Europe of 1974 and its recommendations transferred to the “European Code of Police Ethics” of 2001 - . Summing up, it is necessary to determine if the citizens’ rights have been respected, no matter if the person involved is a citizen opening a proceeding, a crime victim, a suspect undergoing an investigation or a detainee in whatever police centre.

And the body that the Ministry of the Interior has at its disposal is the Staff and Security Service Inspection, in charge of the inspection, verification and assessment of the services’, centres’ and units’ operations of the DG of the Police and the “Guardia Civil” as well as of the behaviour of the National Security Forces’ members while performing their duties.

This Unit was created by the Royal Decree 1885/1996 of August 2nd and was strongly promoted by the Ministry of Interior.

Even though at present the cases of misconduct, malfunction or concrete infringement of the person’s rights represent, as we said, a real exception, precise instructions have been given to the head of the Unit to especially monitor such behaviours according to the “zero tolerance” principle and the relations between the Inspection and those Institutions created for the protection of the citizens’ rights and freedoms, such as the Ombudsman or NGOs actively participating in these kind of policies have been enhanced.

As a result, the 2007 Annual Report of the Ombudsman highlights the effective collaboration of the DG of the Police and the "Guardia Civil", that forwarded to the various units the message underlining the legal obligation according to which "police officers shall gather as much evidence as possible to clear up possible criminal offences, and make them available for the judicial authority and/or the disciplinary investigator in compliance with, among others, article 282 and ff. and article 769 and ff. of the LECrim and article 36 of the Disciplinary Régime Regulation of the Police Security Forces" (section 06005030 of the report).

2. Secondly, it is worth to refer to the implementation of the so-called "Manual on Criteria to carry out Judicial Police Investigations", elaborated within the National Commission of Judicial Police Coordination, that represents a measure clearly focused on the prevention and repression of possible ill-treatment by the National Security Forces. This manual has been massively spread (as indicated in the 2003 backreport) includes in chapters 8, 9, 10, 11, 12 and 17 the Intervention Protocols with Detainees.

In addition, particular attention deserves the initiative aimed at including for the first time in the **State Public Prosecutor Report**, a specific section assessing the amount of torture and other crimes against the moral integrity of the detainees perpetrated by public officers in the framework of the activity of judicial authorities and public prosecutors in 2007 (more details will be given in the answer to section 23 of the CPT report). This shows the political will of the Government not to cease the efforts to prevent, fight and punish the behaviours described in this report. The inclusion of such a section is due to the significant role played by the Public Prosecutor in the field of the fight against ill-treatment, resulting not only from the position of this institution within the legal system, but also from the content of the sentences of the Supreme Court of July 7th 1995 and November 1997 and January 22nd 1998, which recognising its capacity to act as a part in order to request evidence and appeal against its refusal.

The aforementioned sections has been included within the text itself of the report and not as an annex to it; this shows the importance given to such measures by the Chief Public Prosecutor, head of the Public Prosecutor Office, that according to the Constitution, of his own motion or at the request of the involved person, files legal action to preserve legality, the citizens' rights and the general interest protected by law, and ensures the independence of the judges as well as the satisfaction of the social interest before them.

In order to start this initiative (a significant step forward of the Spanish authorities to fight against ill-treatment and torture) the Public Prosecutor Office addressed all decentralised offices with a letter explaining that the compliance with the internationals treaties signed by Spain and the need for the citizens' rights protection through appropriate mechanisms of prevention of abuses by officers fulfilling public functions, requires a detailed monitoring of the proceedings opened due to similar criminal facts. Therefore, information from the offices has been requested concerning the proceedings opened as a result of a formal complaint presented in the different parts of the country for alleged abuses perpetrated by the members of the National Security Forces, together with the indication, if necessary, of the number of proceedings opened, the amount of those which are currently being dealt with and a short summary of the most important ones.

This relevant information from the chief prosecutors of all offices in Spain concerning the criminal proceedings which have been dealt with in the different parts of the country and referring to such crimes represents a useful mean to assess the degree of compliance with the detainee's rights as well as with the judicial investigation mechanisms in case of formal complaint due to torture or other crimes against the moral integrity perpetrated by public officers or to abuses in the fulfilment of their duties.

The data analysed show that, taking into consideration the high number of police actions carried out in 2007, the formal complaints for this kind of crimes are relatively few; however, this shall not be an obstacle to the implementation of all existing means in case of such complaints in order to ensure a strict compliance with the international rules and the national law.

3. Thirdly, it is worth to highlight that the Ministry of the Interior has not ceased to adopt measures aimed at ensuring the utmost protection of human rights, the absolute respect for legality and a strong transparency in public management; this is something new that proves the commitment of the Spanish authorities towards the "zero tolerance" attitude as regards ill-treatment. This attitude necessarily leads us to the exhaustive investigation of alleged ill-treatment; in this perspective, it is important to constantly remind both the security forces and the Spanish society as a whole of the implementation of the "zero tolerance" criterion in case of infringement of the citizens' rights, especially when this violation id due to the behaviour of public officers.

As a result, Instruction 12/2007 of the State Secretariat for Security on the Conduct required from the Members of The Security Forces to ensure the Detainee's Rights was adopted (this instruction has already been mentioned in this report). It makes a big effort to delimit the use of minimum force by police officers, which needs to be proportionate and necessary; it also highlights in various parts of its text the absolute prohibition, in the framework of our legal system, of any physical or psychical abuse during the arrest and questioning of the detainee as well as of the criminal and disciplinary consequences in which an infringement of this principle can result.

More concretely, instruction nº 7 details the procedure to be followed by officers and members of the National Security Forces during the detention and custody of the detainee; this provision adds to the strict existing regulation in this field as regards human rights addressing all members of the Security Forces.

Furthermore, and in compliance with the "zero tolerance" principle in such cases, the public authorities invite citizens to adopt proactive behaviour in order to allow the regular formal complaint of any crime or conduct representing an infringement of their rights.

In this perspective, in order to facilitate the presentation of formal complaints concerning the functioning and conduct of the National Security Forces, Instruction 7/2007 of the State Secretariat for Security has been recently adopted, ensuring, among other measures, that citizens are availed of a Complaints and Suggestions Book in each and every police station and that these complaints are duly investigated and answered by the Staff and Security Service Inspection of this State Secretariat.

The legal changes performed by the Government highlight the firm willingness of the Spanish authorities to implement and spread the "zero tolerance" principle against ill-treatment by police officers; as a result, both the past and the current parliamentary terms have become especially productive periods as regards the improvement of the human rights protection mechanisms in Spain.

4. A fourth example of the attention given by the Spanish Government to the protection and guarantees against ill-treatment is the position recognised to the education of all actors who, in the field of their duties, might become liable for such conducts.

For instance, on December and January of the last year, the General Commission for Information organised Information Days concerning Instruction 12/2007, attended by all categories of officers belonging to the National Police posted in the aforementioned General Commission.

As regards the Guardia Civil, it has also organised a cycle of training actions in the field of "Human Rights" which has resulted in appropriate study programmes for the different educational paths:

a- Training education, preparing the access to the different level of the institution.
b- Advanced education, allowing the staff to get advanced knowledge, carry out activities in specific areas and broaden or up-to-date the knowledge and skills required by due performance of their duties.
c- Advanced Professional education.

The training is organised as follows:

- The first level comprises the education included in the study plans (training). It is given to all officers acceding to the Guardia Civil.
- The second level includes the further and updating training. In this level various training actions are performed. On the one hand, in compliance with the Continuing Vocational Training Plan, training sessions are given within the Guardia Civil Units and on the other hand other classes are given in the framework of the so-called Citizens' Security Days. These are 5 days conferences mainly addressed to officers dealing with citizens' security issues.
- The staff is also given distance learning training.

As a result, the training actions figures in the field of human rights directed to the Guardia Civil are the following:

Training education

Categories	**Number of classes**
Corporals and rank police officers	108[1]
NCO	28
Commissioned Officers	38
Commanding Officers	104[2]
Technical staff	12
Graduate staff	12

[1] Practical classes related to the Practical Procedure Module.
[2] Given in levels 3, 4 and 5.

Advanced education:

- In upgrading courses to Corporal: 5 classes.
- On the other hand, sixteen of all courses given, including the Judicial Police Course, foresee a specific Module on Human Rights in the distance learning modality, reconciles the daily professional activity with attendance to classes.
- In the Basic Judicial Police Course: 10 classes in the personal attendance modality.
- In the Upgrading Courses for officers dealing with citizens' security (headquarters, quarters and stations):

Citizens' Security Days	**Number of classes**
For Corporals and rank police officers	2
For NCOs	2
For Commissioned Officers	2

Summing up, these data highlight the special sensibility and the implementation of the "zero tolerance" principle within the National Security Forces, which have included in almost all training courses, including both basic and advances ones, the study of the human rights protection and guarantees, according to the prohibition of any form of ill-treatment.

The Regional Security Forces are also constantly reminded of the importance of the "zero tolerance" principle against ill-treatment towards detainees. **In the Basque Country**, the Department for Domestic Affairs has already adopted a set of Operative Instructions concerning the Detention Procedure, which have been released and implemented within the police organisation, where these procedures have to be translated to practice.

As regards body search, it establishes that "all fully naked body searches shall be registered in the computer application. An appropriate report will be also issued, explaining the reasons justifying the implementation of such a measure (crime typology, personal circumstances, etc.) and its results. The report will be elaborated following a macro registered within a unique archive for fully naked body searches of the Unit Command. No searches in natural body cavities shall be carried out, nor the detainee shall undergo harmful exercises or positions; it shall not be required for the detainee to perform work-outs, squattings or other exercises of a similar nature".

The Instruction also foresees the implementation of "internal and external controls through appropriate auditing concerning all complaints received and, in general, the existing Detention Procedure Management System, awarded with UNE-EN ISO 9001-2000 certification".

On the other hand, similar considerations can be made as regards the Department for Domestic Affairs of the **Generalitat de Cataluña**.

In fact, with a view at protecting and ensuring the detainees' human rights, the Generalitat Police – Mossos d'Esquadra has adopted both instructions and legislative means, as well as other measures and strategies allowing the control of all police duties abuse and the infringement of the rights of those under custody:

- Video surveillance system in the Detainees Custody Area.
- Creation of the Police Ethics Committee.
- Specific ISO quality detainee programme.

The implementation of video surveillance devices for the custody of the detainees within the Mossos d'Esquadra centres aims at recording everything which might occur in the cells and other parts of the police station; its objective is also to ensure the protection and security of the detainees, preventing them from performing actions that could result in a violation against their physical integrity (self-inflicted injuries) and avoiding any other violation which could be perpetrated by the other detainees and the police officers. Finally, the video surveillance system also allows the monitoring of the officers' conduct, ensuring that they behave in the respect for the dignity, integrity and needs of the detainees.

Therefore, this system is able to ensure that all officers' action complies with the principles of transparency and security and that ill-treatment against the detainees has disappeared.

In the concrete case of the Detainees' Custody Area of the Metropolitan Police Region of Barcelona of Las Corts, the video surveillance system has 98 video cameras[3] covering both the inside and the outside centre premises related to the security, entrance and exit of detainees. Therefore, 26 external cameras cover the bays for cars, parking and access from the upper floors to the custody area. 70 cameras (of a total of 72 inside cameras) allow video recording, while two other cameras allow video and audio recording. The inside cameras are located as follows:

- two search rooms (a total of 4 cameras: two video recording cameras, and two video/audio recording cameras).
- 35 cells (a total of 37 video recording cameras).
- Cross areas and inside premises (a total of 31 video recording cameras).

CCTVs allow multiscreen surveillance of the 35 existing cells, so that officers can constantly monitor the two reception areas and the detainees exit area.

In addition, a Police Ethics Committee was also created on October 2007. It is an advisory body in the field of ethical conduct of the Cataluña Police whose aim is to promote good practices and to contribute to the prevention of attitudes and activities that offend the ethics and correct behaviour of the police. Therefore, the creation of this Committee highlights the commitment of the Spanish institutions towards the "zero tolerance" attitude against ill-treatment referred to in the CPT report.

[3] In those police stations where cameras have not been installed yet, proposals are currently being considered to ensure their implementation and reinforce the video surveillance system in the immediate future.

The tasks of the Committee include:

- To elaborate, revise or update of a draft Ethics Code of the Cataluña Police, as well as assess its implementation.
- To propose to the appropriate institutions suitable measures to improve the ethical conduct of the police, the public image of the Cataluña police as well as to improve the police service and its relationship with the citizens.
- To inform and reply all issues raised both by the heads of the offices dealing with public security and the mayors.
- To request from the appropriate authority the enforcement of procedure confidentiality or the forwarding of the information to the Public Prosecutor.
- To cooperate with the institutions active in the field of training and police investigations, especially with a view at establishing the ethical contents of the training courses addressed to the Cataluña police as well as of the training actions of the officers dealing with security issues.
- To elaborate a public annual report on the compliance with the Police Ethics Code, ensuring the respect for personal data required from the legislation on data protection.

The composition of the Cataluña Police Ethics Committee is also coherent with its mission, provided that its members are subject to the principles of legality, independence, objectivity and impartiality. The Committee foresees the obligatory presence of a member from the Local Police and one from the Generalitat Police – Mossos d'Esquadra, with at least 10 year seniority. It also allows the membership of judges and public prosecutors, jurists of renown as well as experts and professionals in the field of security, external advisors and bodies dealing with the protection of human rights and ethical and democratic values as will as widely renowned police officers.

Finally, it is worth to highlight the adoption of additional measures in Cataluña, such as the implementation of specific quality programmes that allow the revision of the detention procedure ensuring the respect for human rights and fundamental freedoms. These programmes are currently being designed. Their implementation has been scheduled for 2009.

Therefore, the final objective is to ensure the quality of a wide range of proceedings; to comply with the legislation in force and ensure the respect for the human rights and fundamental freedoms of all users; to ensure a human and honourable treatment as well as appropriate means and equipments. In order to elaborate this new quality management system, the Mossos d'Esquadra enter the details of all actions registered into the computer software available. This allows the follow-up and detection of conformity and/or non-conformity elements allowing continuous enhancement and effective correcting measures of any detected malfunctioning.

Finally, (as indicated above) the Spanish authorities have given special attention to training in the field of human rights, with an aim at ensuring that State officers observe a correct conduct in the framework of the detention, custody, questioning and detainees' treatment procedures.

At the regional level, this training is regularly implemented and updated. Special attention is given to the police training programmes throughout the entire professional career, in order to adapt training to the strict integrity principles avoiding the occurrence of arbitrary and abusive conducts.

In the case of Cataluña, the most basic criteria concerning the respect for human rights are included in the updating courses of the Public Security Institute of Cataluña (PSIC).

Summing up, it is fundamental that when such misconducts take place all actors are strict as regards the enforcement of the legal system and the persecution of those responsible. Our legal system foresees all these elements. Therefore, we consider that the CPT recommendation is already being implemented in Spain. All efforts needed shall be made to ensure the implementation of the recommendation in the future, following the CPT's guidelines.

Section 22.

In section 22, the CPT recommends that the appropriate authorities investigate the allegations of ill-treatment made by the 11 people arrested under incommunicado regime in the framework of a set of operations carried out by the Guardia Civil on March, 28th and April, 1st 2007 in the Basque Country and Navarre, provided that the information at the disposal of the CPT indicates that, after the presentation of individual formal complaints, only in two cases an investigation was opened.

The facts highlighted in the report refer to the detentions under incommunicado regime carried out on March, 28th and April, 1st 2007 in the Basque Country and Navarre. On March, 28th C.,* D.;* E.;* F.;* G.;* H.* and I.* They all were sent to jail as a result of an order of the Central investigating court nº2 under accusations of being members of the terrorist group ETA.

On April, 1st J.,* K.*and L.* were sent to prison as a result of an order issued by the Central investigating court nº2.

All these police actions were included in the formality sheets elaborated by the Information Service of the Guardia Civil Headquarters in Guipúzcoa, that report each and every circumstances concerning the detainees, as well as the police officers involved. A computer file containing a copy of these sheets was handed to the CPT Delegation that visited the premises of the Police and Guardia Civil DG. From them the following conclusion can be drawn:

- **The detainees were arrested due to the existence of serious evidence as regards their participation in terrorist activities; this evidence was later confirmed by the judicial authority.**
- **The detainees were arrested in strict compliance with the legal regulations established by the LECrim in force in Spain.**
- **The incommunicado detention was justified by the existence of sufficient evidence as regards their alleged participation in terrorist crimes and was later ratified by the investigating judge.**
- **The detainees were daily examined by the legal doctor of the Central investigating court nº2.**
- **The detainees gave evidence with the assistance of the officially appointed lawyer, in compliance with the LECrim.**
- **The detainees received a correct treatment during their stay in the Guardia Civil facilities**, and in particular:

* 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.

- They did not give evidence while being handcuffed nor standing for long time.
- No evidence was given without the assistance of an officially appointed lawyer.
- Evidence was given in strict compliance with the legal regulation and with legal assistance.
- A copy of the formality sheets was given to the CPT delegation on the occasion of its visit to the Guardia Civil facilities in Guzmán el Bueno Street. These sheets report the evidence giving proceedings with the assistance of the officially appointed lawyer, that sometimes had to be carried out at night, due to the circumstances of the investigation; They also indicate the identity of the police officers involved as well as of the investigator and the secretary of each and every police formality performed.

As regards the considerations made by the CPT about possible irregular evidence giving procedures without legal aid, drawn by the analysis of the Detainees Search and Custody Books of the police station where sometimes the expressions "takes the statement" or "takes the statement with the legal assistance" appear, the following considerations need to be made:

- The Search and Custody Books are hand fulfilled by various officers depending on the time when the custody takes place and the person in charge in each case.
- The instructions as regards the implementation of such books do not comprise a complete or codified catalogue of possible events nor a unified procedure to record them; therefore each officer takes note of them with the degree of detail that they consider convenient.
- The entry "takes the statement" and "takes the statement with the legal assistance", however, refer to the event that the detainee makes a declaration (in which case our legal system requires the compulsory presence of a counsel). This can be deduced by the "Statement minutes". A copy of them was handed to the CPT Delegation. Now, the differences detected in the degree of detail used can be only ascribed to the different officers' attention to details, but in now was allow to draw the conclusions referred by the CPT.

Concerning the detainees' accusations of having been victims of ill-treatment and torture, there is nothing to do but wait for the results of the judicial proceeding. However, it is worth to highlight once again the well-known and public[4] strategy of the terrorist group to systematically present formal complaints alleging this kind of offences due to the significance and impact they have on the media as well as to the likelihood that, sometimes, the international body for the protection of human rights recognise them.

[4] In this perspective, especially enlightening is the document seized from the ETA Araba/98 Commando in possesson of the Central Investigation Court nº 1 (Preliminary Investigation 4/98) describing with all details how the members have to behave in case of arrest: "In case of detention, no matter if long or short, even though you are released without charges, bail or other repressive measures, you shall present formal complaint alleging torture".

Furthermore, this document contains ideas and precise instructions to make these false complaints appear true as well as a detailed explanation of the political objectives of this strategy, including "to show the repression of the antiterrorist legislation, unbecoming for a rule-of –law State" and "to make it possible that the international organisations focus their attention on the lack of freedom suffered by our people, to internationalise and make the repression visible".

Section 23.

In section 23 of the report, the CPT recommends that, in case of complaints for ill-treatment of security officers before a public prosecutor or a judge, these public authorities order the written register of the complaints, a compulsory medical examination (when it is not automatically performed) and the adoption of all measures needed to ensure the correct investigation of the accusations.

In order to reply to this and other sections of the CPT report explicitly referring to the Judiciary, these recommendations together with the content of the report have been forwarded to General Council of the Judiciary (Consejo General del Poder Judicial – which may henceforth appear referred to as CGPJ) and its opinion has been requested. The Permanent Commission of the Council gathered on May, 27th and adopted a communication containing the following considerations:

First of all, some mentions are made as regards the task to ensure and protect the fundamental rights and public freedom of citizens, which is the mission par excellence of the members of the Judiciary. This is a direct effect of article 9 of the Constitution of 1978 that confers to the public institutions the promotion of the suitable conditions allowing both the citizens and the groups to effectively enjoy their freedom and equal opportunities. This declaration has to be complemented with article 24, recognising the fundamental right of all to be "effectively protected by the judges as regards the exercise of their rights and lawful interests, preventing by all means the lack of due defence".

It is also worth to add that the Constitution emphasises the idea of rights and public freedoms protection and its article 53 establishes the submission of all public institutions to these rights and freedoms (and we must not forget that the Judiciary is one of them, duly, managed in a shared way as a result of the full and independent jurisdictional authority). Finally, article 117 describes the characteristics of the constitutional design of the judicial authority and refers to independence, irremoveability, responsibility and full submission only to the rule of law.

Only a coherent interpretation of all judicial complaint in accordance with the constitutional criteria allows the effective protection of those rights and lawful interests that the Constitution establishes and that the Judiciary has to ensure.

Therefore, the CGPJ has no need to stress on the correct implementation of such a duty, provided that it represents a direct effect of the Constitution.

However, it is worth to highlight that the legislation establishes some limits to the CGPJ. In this perspective, it cannot, through the due performance of its competence, give general or particular instructions to the judges as regards the application of the legal system, being it expressly prevented by Law 6/1985, of July 1st of the Judiciary (LJ) (12.3). The CGPJ is a governing body and not a jurisdictional authority, provided that this function "only belongs to the judges established by the law, in compliance with the rules on competence and procedure that the legislation foresees" (article 117.3 of the Constitution). That is to say, it is not possible to interfere in the independent judicial application of law for the settlements of disputes, provided that such an overstepping is formally prohibited.

Nevertheless, this is not an obstacle to the fact that the CGPJ, in the framework of the due performance of its governing competence, monitors the compliance of this judicial application with the aims established in the Constitution, mainly through the guarantee of judicial independence and the implementation of the inspection which is a task directly given by article 122 of the Constitution to the Council.

After the analysis of the judicial aspects highlighted by the CPT in its report, the CGPJ stated what follows:

As regards verifying the authentication of the formal complaint whenever it be difficult to gather medical evidence of the alleged ill-treatment, the reports considers that, on some occasions, it might be difficult to get medical evidence concerning many of the frequently alleged types of ill-treatment. The report highlights that "*judges shouldn't consider the lack of marks of circumstances coherent with the allegations as an evidence disproving them*".

We should not forget that, according to the legislation on procedure, the mission of the judiciary is to order, on its own initiative or ex parte application, the adoption of the appropriate measures whenever a possible crime takes place ("notitia criminis"), in compliance with articles 303 and 777 of the LECrim, as well as in case of ill-treatment against detainees perpetrated by the security forces, as established by article 174 and ff. of the Criminal Code.

According to article 229 of the LECrim, the judicial investigation aims at clearing up the facts, establishing whether a crime has taken place or not including "*all circumstances that might have an effect on the legal description of the fact and the guilt of the offenders*". As a result, the law foresees a wide range of measures to be taken, including visual inspection of the crime scene (article 326 and ff. of the LECrim), reports and expert's analysis (special attention is given by the law to the examination of the legal doctor in articles 344 and ff.), statements of complainants, accused and witnesses, etc…

It cannot be stated that in the framework of a criminal proceedings for alleged ill-treatment (physical ill-treatment, provided that the CPT only refers to this kind of ill-treatment, ignoring other modalities of this offence), the lack of "marks" necessarily leads the judge to the conclusion that the complaint is false.

And this is due to various reasons. Among others, it is important to emphasise that the legal-criminal conceptual difference between ill-treatment and injuries lies in the necessity (in the case of injuries) of medical or surgical assistance, requirement which is not foreseen in the case of offences against health consisting in behaviours that "do not provoke injuries". This is exactly the behaviour described as ill-treatment.

As a result, the idea that the lack of "marks" necessarily leads to the conclusion that the allegations were false, would be more or less the same as to say that ill-treatment is a crime that does not exist in our criminal legal system.

As regards the attitude of the investigating judge when investigating a case of ill-treatment, we have to rely on the responsibility and professionalism of an authority that will not neglect a formal complaint from a detainee only because no physical "evidence" of the aggression was left. The judge, as we said, has at his disposal many investigation elements other than the mere physical evidence in order to justify the possible opening of an oral proceeding against the alleged offenders; therefore, there is no reason to think that the results of an investigation could ignored by the judicial authority in serious cases such as those justifying the elaboration of the report submitted to our analysis. In addition, judges always take "ad casum" reasoned decisions, with independence and impartiality, and the result of their investigation is always included in written reports or other types of documents which can serve as an evidence, in the procedural framework of a judicial or pre-trial investigation.

Apart from that, we have also to take into account the fact that the victim, in the event of a dismissal of the complaint, can always lodge the appropriate appeal in accordance with the LECrim.

Therefore, Spain already meets the recommendation made by the CPT, taking into account the express regulation offered by the Spanish legislation as regards these procedural formalities and the strict compliance that is required from the judicial authority.

In addition, the reasoned adoption of such decisions represents a guarantee. And another guarantee which complies with the principle of impartiality is the separation between the judicial authority that carries out the terrorist crime justifying the detention (Central investigating courts in the Audiencia Nacional) and the judge who leads the investigation in case of complaints for torture or ill-treatment against a detainee (Investigating courts).

The summary presented above as regards the investigation related to A.* and B.* is an example of the inchoation of a proceeding in the full respect for the rights of the detainee and of the communication and collaboration between the different authorities involved in the proceeding (judicial authorities, legal doctors, police, …).

As regards the position of the Public Prosecutor within a criminal proceeding, and, in particular, the aforementioned actions, it has to be emphasised that he plays an active role, as shown by the competence that the LECrim assigns to him; in fact, as a proof of this attitude and active collaboration, and in compliance with the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, of November, 26th 1987, on October 2007 The State Chief Prosecutor met with the members of the delegation of the Committee as a result of which all chief public prosecutors of Courts of Madrid and Cataluña (regions involved by the investigation) were compelled to provide the Committee's members with all information required and to ensure free access to the police facilities, both of custody and prison, in accordance with the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

It is also worth to emphasise the significance of the already mentioned initiative taken by the Public Prosecutor Office as regards the inclusion of a specific section in its Annual Report focused on the amount of torture and other crimes against moral integrity perpetrated by public

* 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.

officers in the framework of the activity of judicial authorities and public prosecutors in 2007. This initiative is an example of the steps forwards taken by the Spanish authorities in the field of Human Rights protection.

It is also to highlight that this measure was favourably received by the various chief prosecutors posted in the different regions of Spain, as a concrete example of their mission to defend legality and the citizens' rights and to ensure the enforcement of the effective judicial protection, as established in article 24 of the Constitution.

However, it is worth to underline that in 35 of the 50 Spanish provinces no formal complaint was presented nor proceedings were inchoated due to torture offences perpetrated by public officers. In this perspective, in order to amplify or give evidence of this information, we refer to the Chief State Prosecutor's Report, where further or more detailed data can be found in relation to this part of the Committee's report.

As a result, we consider that the CPT recommendation on this issue can be seen as a reminder of a practice that is already being implemented and carried out in compliance with all guarantees required from the Committee.

III.2 Safeguard applied to the detainees under incommunicado regime.

Sections 24 to 26.

With a general nature, in the sections 24 to 26 of its report, the CPT describes the activities carried out during its visit to Spain, as well as analyzes the registered trend related to the guarantees applicable guarantees during the detention under incommunicado regime. Later, it issues a series of far-reaching recommendations.

Preliminarily, to answer all of them it is necessary to start from the **currently Spanish legal framework, which the CPT recommends to review**, in order to study what may be the procedures through which operates the required strengthening, as regards the rights of informing a chosen relative of the detention, and that of appointing a particular lawyer to lend counsel assistance to the detainees under incommunicado regime.

The right to freedom is regulated in the Article 5 of the European Agreement of Human Rights, signed by Spain in Rome on the 4 November 1950 and ratified through the Instrument of 26 September 1979. Each of the sections of the mentioned article establishes that the detention, or, where appropriate, the internment, will have to be carried out in accordance with the law, something which, according to the existing case law, means a feedback from the internal legislation of each of the countries subscribing the Agreement. In the Spanish case, the law referred to is, firstly, the Spanish Constitution, and, on a second level, the Code of Criminal Proceedings (Ley de Enjuiciamiento Criminal, henceforth called "LeCrim").

The starting point to analyze, then, each of the Recommendations referred to by the CPT on the matter of the detainee incommunicado regime is the Spanish Constitution, which, in its Article 1, states as a higher legislation value, together with the justice, the equality and the political pluralism, the freedom, as defined by a manifold constitutional case law (SSTC 132/1989, 120/1990) as "the autonomy of the individual to choose among the various vital options presented him, according to his own interests and preferences" or "the general freedom of action or general freedom of self-determination of the individual ".

This generic reference to freedom is specifically defined, in one of its projections, as the physical or individual freedom, defined in the Article 17. This is, therefore, granted the legal status of a Fundamental Right and is subject, furthermore, to a special territorial protection, as the possibility is allowed for appealing before Constitutional Court against "any infringements caused to this right by any measures, legal acts or simple *de facto* behaviour exerted by the public authorities of the State, of the Autonomous Regions and of other public bodies having territorial, corporative or institutional nature, as well as by their civil servants or officers" (Article 41 of the Organic Law 2/1979, regulating the Constitutional Court)..

In fact, the Article 17 (1) of the Spanish Constitution establishes that "*every person is entitled the right to freedom and safety"* and that "*Nobody may be deprived of his freedom, should it be not in full compliance with what is established in this article and with the way stipulated by law"*. That right to "freedom and safety" entails, as told by the SSTC 15/1986 and 120/1990, the right to "physical freedom" guaranteeing all citizens "the absence of disturbances resulting from measures such as detention or other of similar nature which, when adopted arbitrarily or illegally, restrict or threaten any person freedom to organise, at any moment and any place within the national territory, their individual and social life according to their own options and convictions".

Regarding the **legal concept of detention**, the Constitutional Court, in its STC 98/1986, defines detention as "any situation in which the person is disabled or prevented to determine by himself, by act of his will, a lawful behaviour, in such a way that detention is not a decision adopted during a procedure, but a pure factual situation, with no possibility of finding intermediate areas between detention and freedom".

Despite the fact that the LeCrim (Article 490) considers the possibility of a detention carried out by private individuals[5], as well as the detention agreed by the Judicial Authority during a penal procedure, the CPT report seems to refer, with obvious clarity, to **police detention**, understood as a precautionary measure by which the Law enforcement State Corps and Bodies deprive of freedom the person whose involvement in a criminal act can be presumed. It is a measure having temporary nature, in the sense that it is only kept for the time strictly necessary to carry out identification and questioning proceedings, a time stipulated by law and after which the person must be set free or brought before the legal authority, as deemed appropriate.

Thus, the very nature of freedom described in the Spanish Constitution, as a higher value and a fundamental right, and of the detention, as a restrictive, provisional or preventive measure applied to the freedom of the person, requires the latter only to adopted with a series of guarantees making it constitutionally permissible. Thus, as stated by the STC 199/1987, "*the detention of a person must be linked to the strict necessity and the briefest temporary lapse criteria, in accordance with what is established in the Article 9 (3) of the Civil and Political Rights International Agreement, and by the Article 5 (3) of the European Agreement for the Protection of Human Rights, ratified by Spain".*

[5] However, in these cases, the detainee must be brought before the police or the legal authority as soon as possible and, in any case, within a period of 24 hours following the detention, under pain of being charged of the offence of wrongful arrest, as stipulated in the Articles 163 and ff. of the Penal Code

The same sense motivates the STC 112/1988, remarking upon the need "*to give a restricted interpretation to any exception to the general freedom rule,"* being, in any case, to be required, as stated in its 178/1985 and 341/1993 rulings, *"a proportionality between the right to freedom and the restriction thereof, so that there be excluded –even when stipulated by Law– those cases of freedom deprivation which, through not being reasonable, would tilt the balance between the right and its limitation".*

Nowadays, the Articles 489 to 501 of the LeCrim, of 12 December, are the ones regulating the detention, as well as its different assumptions, the people authorised to carry it out, the time duration and the effects entailed by the detention.

Likewise, the law also acknowledges, in its Article 520, a whole range of rights in assistance of the detainee and that are, correlatively, duties the fulfilment of which the public authorities must ensure. Among these duties are included the right to be informed, immediately, and in an understandable way, of one´s rights and of the reasons for his being arrested; the right to keep silent, that of not to answer some of the questions that could be asked, or to declare that it will only speak before the judge; the right not to incriminate himself and that of not to be confessed a culprit; the right to inform a relative or another person of his choice of the fact of the detention and of the detention place where he stays at any moment; the right to be assisted by a counsel, as well as by an interpreter, in the cases in which the latter is necessary; and that of being examined by a legal doctor, should it be deemed necessary.

It is however possible, that these rights entitled to the detainee be limited or restricted in certain assumptions. So states the Article 55 (2) of the Spanish Constitution, which considers the possibility of suspending some of them in the case of certain persons, in relation to the investigation upon the acts committed by armed gangs or by terrorists, in accordance with the conditions pointed out by an Organic Law, a limitation that currently leads back to the Article 520 bis of the LeCrim, incorporated by the Organic Law 4/1988, of 25 May.

The detention under incommunicado regime is, therefore, a provisional situation stipulated only for those cases in which the detainees have been arrested as presumed to have taken part in the commission of one of the offences referred to by the Art. 384 bis of the Law (acts committed by a person integrated into or related to armed gangs, or by individual terrorists or rebels). It is based on the need to care for the success of the police inquiries of certain terrorist offences, thus avoiding the detainee to be allowed to inform to rest of the members of the terrorist cell and/or organization, and preventing, therefore, the possibility of flight of this rest from the moment of the first arrest.

However, despite the clearly restrictive character of this kind of precautionary measure, the Spanish legislation sets remarkably well the limits to the incommunicado detention, and sets as limits a series of conditions acting as guarantees, in such a way that the latter does not put at risk the essence of the rights of the detainees, complying with what the Constitution states. This is completed by the fact that breaching the aforementioned guarantees entails, in the Spanish legislation, the requirement for criminal liability from the public officers acting as offenders.

Thus, the adoption of the incommunicado regime measure in Spain, constitutionally foreseen in exceptional assumptions, generates a series of restrictions that, in an especial way, justify the fulfilment of a whole series of guarantees. So, according to what is set out in Article 507 of the LeCrim, the incommunicado regime modulates some of the rights to which the detainee is entitled with a general nature according to the Article 520, establishing that:

-First of all, the incommunicado regime permits postponing the maximum detention period beyond the 72 hours deadline, again due to complexity characterizing antiterrorist operations, for which this period is usually insufficient to inquire the complex plots involved in this highly organised way of delinquency. However, the law requires that the aforementioned extension be requested within the first 48 hours of detention from the Investigating Judge, who has to resolve within the 24 following hours. The legal authorisation –or its denial– must be duly motivated, and **in no case might the detention be longer than a total amount of five days.**

Owing to this reason, it is necessary to point out that the CPT report makes a mistake when its section 25 gives a maximum time duration of 13 days for the period of police detention applicable in Spain to those offences related to organised crime, terrorism or drug trafficking.

On the other hand, **the lengthening of the detention period in the case of detainees related to terrorist acts, which is considered by the Spanish legislation, is neither the single one in the European and international background, nor can it be assumed as being the most restrictive.**

Even if this is, in no way, an argument aiming a "per se" justification for the extension of the detention period considered in the Spanish legislation, we cannot ignored the relevance, as a reference framework, of the legal system in countries belonging to our environment, insofar as, nowadays, terrorism has unquestionably become a form of organised crime, so that the States, concerned about the defence of their citizens´ interests and about succeeding in achieving a space of freedom, justice and safety within a globalised framework, are undertaking international legal cooperation measures in order to reach due coordination and of establishing effective instruments.

In fact, immediately after the September 11 attacks, countries like Italy, France, the United Kingdom and the United States have amended their legal rules, which has entailed toughening the security policies within the framework of the European Legal Space, and the subsequent limitation of some rights, principally that to freedom, through the enlargement of the detention period of persons related to terrorist activities, in assumptions as exceptional as the aforementioned. In other Member States of the European Union, such extension is even higher than the one stipulated in the Spanish legislation.

In Spain, the incommunicado detention system of the does not foresee a greater restriction of rights than that established in the legislation of other countries of the European Union, in its police stage as well as in the legal one. What is more, in some cases our system is less heavy.

Thus, in France, the Investigating Judge is authorised not to allow any visits to the preventive detainee for a period that may reach up to 4 years. In the German case, the incommunicado regime internment may be prolonged during the whole time of the stay in prison, since the law does not establish any limit to the length of incommunicado regime. On the other hand, it is necessary to point out that, in Spain, the incommunicado regime preventive prison may in no case exceed 8 days.

If we look at the United Kingdom legislation, we notice that the incommunicado regime is decided by a police responsible (having the rank of Superintendent, or higher), something unthinkable in the Spanish constitutional guarantee system, where the decision as well as the control and the follow-up of this measure has always been entitled to the legal authority, since the beginning of the detention. Furthermore, the British law allows the competent police officer not to inform the Judge of the incommunicado regime of a detainee, until after 48 hours from the arrest time, whereas in the Spanish case the incommunicado regime must be immediately requested from the legal authority, who will issue his agreement or his denial within 24 hours. It is finally necessary to point out that in the United Kingdom the maximum period of police detention is 28 days, while in Spain the maximum period is 5 days.

- Secondly, the counsel assisting the detainees under incommunicado regime will necessarily be court appointed.

- Thirdly, the detainee will not have the right that the relative or person of his choice would be informed of the fact of the detention and of the detention place wherein he is at every moment.

- And, finally, the lawyer will neither have the right to privately interview the detainee at the end of the practice of the proceedings in which he would have taken part.

- Furthermore, the sole person authorized by law to adopt the decision to hold a detainee under incommunicado regime is the Judge, who will furthermore have to authorise it within the following 24 hours, and always through a motivated ruling. This, even though being a "limit" in view of a detention that could be carried out by the police authorities, is a guarantee, and the greatest one, from a material standpoint, in order for the legal authority to supervise an action limiting rights and having an exceptionally aggravated nature.

In the light of these limitations, the CPT report states a reflection. It consists of laying forward the eventuality and feasibility of amending the penal legislation regulating the incommunicado regime in Spain, and the limitations deriving from the latter that have just been described. The CPT considers this amend possible, insofar as it has detected how, in practice, and since 2006, two Investigating Judges of Audiencia Nacional did rule the application of a series of measures which smoothed out the mentioned restrictions and which, therefore, set themselves as specific guarantees since the moment when they were authorised. They include, among them, the express mention of the "obligation, for the officers of the Law enforcement bodies, to inform the family of the detainees of the fact of the detention and of the detention place where the person staid".

In fact, in December 2006 two of the six Central Investigating Courts of the Audiencia Nacional allowed the detainees to be examined by doctors of their choice, and ruled that officers of the Law enforcement bodies should inform the family of the detainees of the fact of the detention and of the detention place where the person had been transferred, allowing, too, the videotape recording of the questionings.

In this matter, the first thing that it is necessary to point out is that the Article 12 (1) of the LOPJ establishes that, in exercising their jurisdictional power, Judges and Magistrates are independent, regarding other legal bodies as much as the Governing Bodies of the Legal Power, including in this safeguard such a body of external governance as the CGPJ. This prevents the possibility, for them or for their governing bodies, to issue instructions, having general or particular nature, on the application or interpretation of the legislation that judges carry out in exercising their jurisdictional function.

So, the aforementioned measures, referred to in the report, were adopted by the jurisdictional, sovereign body in applying and interpreting the Law within their competence scope, **without necessarily entailing from that any generalization. It must be borne in mind that, in those cases expressly referred to by the report, it seems obvious that, once it was obtained the information of the detention and of the custody place, through other means, it did not seem precise to keep the incommunicado regime as regarded the family and friends. As this is not the usual case, each of the cases must, therefore, to be examined by itself, and the measures deemed adequate by the judge should, hence, be adopted.**

In any case, the adoption of the mentioned measures had as an aim to prevent the action itself of the officers and to preserve the detainees´ rights, although never under suspicion of the possibility of torture or maltreatment.

Consequently, it is not considered necessary to carry out the legislative amendment that the CPT requires, as there are enough guarantees so that the rights to be entitled to the detainee under incommunicado regime be respected to the utmost, and the risk situations be prevented.

The absence of a systematic nature for the incommunicado regime is shown by a mere analysis of the detention data, as detentions were carried out in 2007 by the Law enforcement Corps and bodies in Spain, corresponding to those offences included in the area of application of the Article 384 bis of the LeCrim (offences committed by persons integrated in or related to armed gangs, or by individual terrorists or rebels):

Of a total amount of 293 detaineees because of this kind of offences, the incommunicado detention was only applied to 110 of them, which represents 37,5% of the cases.

Section 27.

The CPT recommends the Spanish authorities to review the current legislation in order to ensure that the police custody of the detainee in incommunicado regime be reported to the person chosen by the aforementioned detainee, informing this person of the arrest and of the detention location as soon as possible, and in no way later than 48 hours after the moment in which he was firstly deprived of freedom, as it considers this to be an essential guarantee against mistreatment.

The Committee refers to one of the rights generally considered in the Article 520 of the LeCrim, and which is, however, adjourned whenever the incommunicado system is decreed.

Informing the person chosen by the detainee of the arrest and of the custody location is a must required by the Spanish penal legislation to the officers of the State Law enforcement Forces and Bodies, and one of the rights entitled to the detainee, as established by the Article 520 (2) (d) of the LeCrim and by the Instruction 12/2007 of the Secretary of State for the Security on the Behaviour Required to the officers of the State Law enforcement Forces and Bodies in order to guarantee the rights of the persons detained or under Police custody, establishing that:

"It will be immediately guaranteed the right of the detainee to inform a relative or a person of his choice (and of the Consular Office of its country, in the case of foreigners) of the fact of the detention and of the custody location place where he is to be found at any moment."

The police officer is furthermore obliged to enter that communication –to the person or the relative chosen– through the due observation in the existing telephoneme book of each and every one of the police facilities, reporting it in an express way in the corresponding formalities.

However, its limitation is admitted, with an exceptional nature, by the legislation for the incommunicado detention regime of people related to terrorist activities, according to the Article 527 (b) of the LeCrim.

First of all, it is necessary to recall that, in Spain, the incommunicado regime is applied to the detained person as a precautionary measure Article –Article 520 bis, related to Article 384 bis of the LeCrim– decreed by the Legal Authority and under the protection of the latter, and does not always have as an aim the isolation of the prisoner, but the putting the latter off possible informants or links, thus preventing him from receiving or issuing orders that could hinder legal researches.

In this sense, the deprivation of the right of the prisoner to tell a person of his choice of his being detained and of the place where he is under custody is related, in the case of armed gangs bands or of highly organised terrorist networks, to the undenied attempt so as to put off, as much as possible, the spreading via the communication mechanisms of the detainees of any corresponding orders and alerts that might enable the flight of the rest of the members and the destruction of criminal perpetration evidence.

Even though it is true that the rapid notification of the detainee ´s police custody to a person of his choice is one of the rights acknowledged in the Article 520, its purpose is, essentially, to allow for a possible lodging of a "habeas corpus" appeal, according to the requirements indicated in the Organic Law 6/1984, of 24 May. This is an important guarantee to prevent mistreatment; moreover, we must insist that a much greater guarantee to fight this type of behaviour is the continuous control exerted by the Legal Authority and by the Prosecutor. Since the beginning, they must have a due register of the detention, of the place of custody and of the operating legal officers. They must also be availed the necessary resources to carry out that control, assisted, whenever appropriate, by the corresponding legal doctors, and trained to take the measures necessary at each moment, as, for example, that of not authorizing the incommunicado regime or of arranging that the detainee be immediately brought before him.

Therefore, the CPT use of the term "secret detention" to refer to the "incommunicado detention", does not seem adequate, so far as the Investigating Judge as well as the Prosecutor, and even the court assigned counsel, have got immediate knowledge of the latter and of everything related to the detainee situation. This is, certainly, a legal guarantee for the incommunicado detainee himself, while ensuring at the same time the legitimate interests of the investigation to be guaranteed: this is a vitally important question whenever it applies to the offences specified in the Article 384 bis of the Penal Code.

Therefore, the incommunicado regime detention takes place in Spain with all procedural guarantees. Its legal system is extremely restrictive, because it requires in any case a legal authorisation through a motivated and reasoned resolution that has to be dictated in the first 24 hours following the detention, and a permanent and direct control of the detainee ´s personal situation by the Judge that has decided the incommunicado regime or by the Investigating Judge of the legal district where the detainee is deprived of freedom.
Furthermore, as well the ordinary courts as the Constitutional Court –the upper legal body entrusted to look after the fundamental rights in our country– have issued a statement on adapting our legal incommunicado regime detention system to the requirements of the International Agreements

signed by Spain. This is precisely due to the strict guarantees that our legal rules establish in this matter. An example of that is STC 196/1987, 7th Legal Foundation, that states that in order for the aforementioned measure to be admitted and considered in agreement with the Constitution, "*it can be made essential that the police and legal formalities aimed at their investigation be carried out with the utmost secrecy, in order to avoid the knowledge of the state of the investigation by outside people to bring about that culprits or persons involved in committing the investigated offence could evade the action of justice, or that evidence of its commission could be destroyed or hidden",* given the special nature or gravity of certain offences have, or the subjective and objective circumstances concurring in them.

Section 28.

The CPT recommends the Spanish authorities to take the necessary measures to ensure that detainees under incommunicado regime be allowed to privately communicate with a counsel, from the start of their detention.

The Committee report points out (page 23) that "*the Spanish incommunicado regime detention has circumvented the assessment of the potential risk involved in contacting a private counsel, so that the counsel is automatically court appointed", without "it being possible to be any reasonable justification in order not to allow a person to speak in private with a court appointed lawyer, from the beginning of the police custody and also later on, whenever it is deemed necessary, even before the oral hearing at the Audiencia Nacional".*

The first thing that it is necessary to emphasise is **that an analysis of the Spanish procedural legislation suffices to make sure that the latter enables a more than sufficient access to counsel assistance, with full respect of the contents of this guarantee for the prisoner.**

So, the Spanish Constitution, in the Article 17 (3), guarantees counsel assistance to the prisoner during police-led and legal formalities, in the terms established by law, which are currently those defined in the new wording given to the Article 520 of the LeCrim by the words stated in the Organic Law 14/1983, of 12 December, relating to counsel assistance.

The Article 520 (2) (c) does point out that "a*ny detained or imprisoned person is entitled the right to choose a counsel and to request his attendance so that he witness the police-led and legal formalities of his issuing a statement, and take part in any identity parades he could be subject to. recognition of identity that she is the object. If the detained or imprisoned person does not choose a counsel, the court will appoint one".* It may therefore be inferred that the right to counsel assistance is a subjective right.

On the other hand, the same Article 520 (6) makes even more explicit the right to counsel assistance by defining its contents, and by stating this right to become defined among the information given the detainee of the rights he is entitled to, as well as during his medical examination. Once concluded the proceedings in which the counsel has taken part, it may be requested from the legal or bureaucratic authority the statements or further explanations considered suitable, as well as writing down in the minutes any incidence having taken place during its practice. And, finally, a private interview may be held with the prisoner at the end of the proceedings wherein he would have taken part.

In view, therefore, of the rules, it can be affirmed that the legal system of counsel assistance to the detainee established in the Spanish legal rules ordering is based on the following postulates:

1. - The Spanish ordering guarantees, in its Constitutional regulation as well as in the legal way, the right to the counsel assistance entitled to any detainee.

2. The intervention of the counsel in the penal process is carried out at three differentiated stages:

- Before the statement, strictly limited to require the police officer to inform the detainee of the rights entitled to him, according to the Article 520 (2) of the Law of Criminal Legal Procedure (facts attributed to him; ability to keep silent and not to issue a statement; not to incriminate himself; choice of a counsel; that the person or relative of his choice be informed of his detention; to be assisted by an interpreter, and to be examined by the legal doctor), and that, whenever appropriate, a medical examination should be proceeded to.

- During the statement, wherein he only takes part when it is over, to request further explanation of any matter deemed needed, or writing down any incidence, and

- Once the statement is over and signed, the counsel could be privately interview the detainee, without the secrecy of this communication implying a breach of the compulsory measures of security, surveillance and custody. Therefore, there is no communication between the detainee and his counsel, until the statement proceedings are closed.

3 The maximum period in which the prisoner is under the custody of the authority without any counsel assistance is of eight hours immediately after detention time, a period during which the detainee may be asked no questions, nor be subject to any proceedings, while being informed, since the moment of his arrest, that he is entitled the right to keep silent, and to ask for a medical examination.

However, if the detainee is under incommunicado regime, he cannot choose his defending counsel, who will be court appointed; he does not have the right to inform a relative or a person of his choice of the fact of his detention or of the location wherein he is at any moment; and, finally, he is deprived of the right to confer privately with his counsel, at the end of the proceedings of the formalities in which he had taken part. **What are the reasons for these limitations? Generally speaking, they can belong to two headings: the legal one and the strictly material one.**

From a legal point of view, the legally established limitations for detained and incommunicado held persons are constitutional, as stated by the Spanish Constitutional Court in many case law sentences established to that effect. Such is the case, for instance, of STC 7/2004, of 9 February, which points out that " *applying the Articles 520 bis and 527 of the LeCrim is an obvious restriction of the right, that the legislator cannot order in an arbitrary way, because any limitations to the fundamental rights require not only that their core be respected, but also that they be reasonable and proportionate to the aim as to which these limitations are set"*. In these terms, the Upper Court says, "*the measure of keeping the detainee in incommunicado regime, adopted under the legal conditions stipulated by the Law, and the temporary limitation of the exercise of the right to the free choice of a counsel, which will be revoked as soon as the detainee leaves the incommunicado regime, cannot be depicted as a unreasonable or disproportionate restrictive measure"*. Other rulings having similar contents are the SSTC 186/1987, of 11 December, the FJ11, 96/1987, of 16 December, the FJ5, 21 March 1988, 24 January 1995, 55/1996 of 28 March, 161/1997, of 2

October, and 16 May 2000. It is inferred from all of them, in any way or other, or by combining one point or the other, that the necessary **proportionality** is granted to the adoption of this type of restrictive measures, which is an essential requirement for them to be constitutional. This proportionality, acting, therefore, as a guarantee, requires:

First of all, that the measure adopted be suitable, that is to say, implying the express prohibition for the latter to be improper regarding the end that its adoption aims to obtain; thus, it does not seem excessive that the prisoner is deprived of the right to inform a relative or to have contact with a counsel of his own choice, given the extreme seriousness of the offences charged to him and of the purpose and cautions with which the investigation must be carried out.

Secondly, that the aforementioned measure be necessary**;** although this has been pointed out for each of them, it seems obvious that if the first detainee as a result of an antiterrorist police operation is not kept in incommunicado regime, the flight of the rest of the cell members is a possible risk not to be allowed. The incommunicado regime provides with a time, highly needed, so as to obtain precise indications and evidence that would be lost if the detainee was not under incommunicado regime.

Finally, that the measure be strictly proportional, which requires, in any case, the "assessment" of the conflicting interests. So, if it is proceeded to carry out that assessment, the limitation of the right (incommunicado regime) is of lesser gravity than the perpetrated offence (terrorist act) and therefore, with the necessary exceptionality and the legal cautions, the Spanish legal ordering grants the competent authorities the lawfulness to carry out this kind of acts, without the consequent need to go amend the legislation currently in force.

If, from the legal standpoint, it does not seem necessary or suitable to carry out an amendment to any of the rules, **from a material viewpoint** an identical conclusion is reached. Again, the justification of the mentioned measures is based on the seriousness of the offences charged to the detainee, and in the difficulty to carry out the investigation. Given the context in which this kind of detentions frequently happen, being practiced in the framework of police operations of wide complexity affecting several people presumed involved in different terrorist acts, adopting legally established limiting measures is aimed at facing the dangers that the knowledge of the state of the investigation by outside people could result in culprits or persons involved in the investigated offence evading the action of the law, or in evidence of criminal acts commission being concealed or destroyed. The justification is, therefore, recognized when allowing for the protection of those goods, social peace and civic security, acknowledged in the Article 10 (1 and 4) of the Constitution.

Consequently, the impossibility for the detainee to choose a lawyer enjoying his trust is due to the need to guarantee the effectiveness of the incommunicado regime. If the aim of the latter is but to prevent the escape from the action of the Law of people assumed as involved in the facts investigated, or that of avoiding evidence of the crime commission to be concealed or destroyed, due to the leakage of the arrest, or that new criminal acts are perpetrated, the aim is the same in the case of the amend to the right of counsel assistance: owing to the characteristics of this kind of organisations, provided with complex structures and contacts in diverse areas, it seems clear that if it were allowed for the detainee to appoint a counsel of his own choice, the latter would surely be a person related to the terrorist organisation background, so that there would be a breach in the incommunicado regime, should the detainee be allowed to be interviewed by the counsel appointed by the party.

On the other hand, the fact that, in these assumptions, the practice only entitles the detainee the right to counsel assistance, leaving the appointment of the lawyer to the authority of the court, and that of the confidential interview being restricted, guarantees the detainee isolation without decreasing the essence itself of the right to counsel assistance, established by the Article 24 of the Spanish Constitution. In fact, the Constitutional Court has made repeated statements on the constitutionality of the inexcusable assignation of a court appointed counsel, in the assumptions that the incommunicado regime be decided for the detainees, establishing that the Article 17 (3) of the Constitution only requires the effectiveness of the defence counsel, regardless of the method of his appointment (SSTC of 11 December 1987, 21 March and 8 of April 1988, and 24 January 1995).

Once this point is reached, it is convenient to analyze the three **questions that the CPT considers should be amended, through the suitable revision of the Spanish legislation**, **regarding the right to counsel assistance to detained persons under incommunicado regime:**

1 First of all, the Committee considers essential that the Spanish ordering guarantees the detainee ´s access to a lawyer from the beginning of the arrest and not since the statement has been taken, in order to warn against the possible commission of maltreatment by the law enforcement officers, and to prepare the defence of the detainee.

Even though the aforementioned access to a lawyer takes place, for incommunicado detainees, only since the statement is taken and not since the arrest, the LeCrim requires, however, that activities be carried out with the higher speed. It thus points out that the court appointed counsel will have impersonate himself to the detention centre as soon as possible and, in any case, within the maximum period of eight hours since the communication to the corresponding Bar, it being the usual practice for the detention centre and the Bar to decide upon the hour when the attendance of the lawyer will take place. Furthermore, it is set down in an express way that the assigned counsels that would fail in complying to their attendance duties without any justification will be liable for the corresponding responsibilities, of which they could, as such, be charged.

In this sense, if our legislation is compared with that of other countries nearing our background, and previously pointed in this report, the Spanish position is much more benevolent for the detainee as, even in the case of terrorist acts, although under incommunicado regime within police facilities, or within the first 72 hours, or the 48 extended hours granted by the legal authority, this incommunicado situation will not deprive him of the right to defense he is entitled to, a right that remains in full.

From a legal point of view, the Spanish procedural rules recognise a series of specific guarantees affecting the right to counsel assistance to the incommunicado detainee and which come specifically into play to safeguard the exercise of the latter and to avoid the lack of due defence of the prisoner.

So, the fact that the counsel appointment should compulsorily be communicated to the latter not directly, but through the Bar, is the first of those guarantees, insofar as it ensures the latter corporative body to control the exercise of the provision of counsel assistance to the detainee. Furthermore, the mentioned guarantee is strengthened by the legal requirement that the aforementioned communication to the Bar be duly and formally registered.

Furthermore, according to the Articles 284 and 295 of the LeCrim, the Judiciary Police Department must inform the judicial body and the Public prosecutor's department of the proceedings they would have carried out, in an immediate way and with no undue delay. It is a duty the breach of which entails, furthermore, the corresponding disciplinary or even penal responsibilities, in the terms of the Article 537 of the Penal Code. The forwarding official document must include not only the description of the facts, the operations carried out and the names of the persons involved and of the possible witnesses, should there be any, but also "all the circumstances that they would have noticed and which might have been an evidence or a clue of the committed offence", including the exact moment when the Bar was informed of the arrest, all of which must appear as a copy in dossier to be sent to the Judge once the police proceedings are through and of which, furthermore, the lawyer may have access.

Likewise, the Instruction 12 /.2007 of the Secretary of State for the Security establishes:

"*Special care will be taken so as to guarantee that the right to legal assistance be enjoyed according to what is stipulated in the legislation, using the available resources to make effective the attendance of the lawyer as soon as possible.*

To this aim, the request for counsel assistance will be immediately forwarded to the lawyer chosen by the prisoner, or, by default, to the Bar, renewing the request if, three hours after the first communication, the lawyer would not appear.

In the book of telephone calls the call or calls to the lawyer or to the Bar will be always registered down, with all the incidences likely to have occurred (impossibility of establishing due communication, lack of answer, etc)".

Therefore, the Instruction stresses the requirement not to delay the detainee stay once the police proceedings deemed necessary to carry out are over. Thus, practically, once the latter have been carried out and the official report is closed, the detainee will be brought, without any illegal or undue delay, before the court, or will be granted his freedom, according to the investigating magistrate.

As a consequence, the Investigation corroborates what was set out by the Article 520 (1) of the LeCrim and also by the STS 165/2007, STC 31/96 and STC 288/2000 and 224/2002, as well as by the Article 5 (2 and 3) of the European Agreement for the Protection of Human Rights and Fundamental Freedoms and the Article 9 (3) of the Civil and Political Rights International Agreement.

Fourthly, and to lend further support to the proportionality of the restriction that the law considers in the case of incommunicado detainees relating to their access to counsel assistance, it is necessary to emphasise that informing the lawyer of all carried out proceedings, once they have been actually made, entails an additional guarantee in which the lawyer´s role is a key one, as he can control the effective time that the detainee spent in a regime of freedom deprivation system, and can, furthermore, to confront those data with those in the hands of the legal authority, should it be deemed necessary.

To what has been stated above, one more guarantee is added: the necessary access for the counsel to the police report or to the report of the formalities already carried out.

Even though it cannot be affirmed that the rules recollect this guarantee in an express way, a systematic interpretation of the letter c) of the Article 520 (2) (c) of the LeCrim, and of the case law itself, does not allow to infer any other thing. Thus, when recognising and regulating the right to a counsel´ s assistance, it is pointed out that the latter is focused to be lent "*in police and legal formalities"*, as is also emphasised in the Article 17 (3) of the Spanish Constitution. That is to explain that assistance is acknowledged in the case of certain procedures, after which the counsel may carry out a series of specifications, either requesting further extension of the statements issued by the person defended by the counsel, or asking for minutes with written statements of any irregularities detected by the counsel.

It is obviously the case that, in order to be able to carry out this action, the counsel must be able to know, beforehand, what are the facts attributed to the person defended insofar as, elementarily, the counsel cannot be told by the prisoner neither the facts nor the prisoner´ s version or explanation. The counsel will only be aware of them as soon as the formalities are over, as stated in the Article 520 (6) (c) of the LeCrim, such access being possible so far as the formalities have not been declared secret and. Furthermore, the Article 527 of the Lecrim does not deny such access to the prisoner held incommunicado, whose counsel may also enjoy this possibility.

Thus, the access the counsel has to all activities practiced until the moment he or she enters the police facilities allows the counsel to lend actual and effective assistance, that is to say, with full cognizance as of the possible circumstances, in order to advise the prisoner in the most suitable way, either to submit or not to submit any statement, to keep silent or to be examined by a doctor. That is to say that the counsel will allow his client to conduct his behaviour, all along the formalities, in order to supplement or impugn, where appropriate, those having been already practiced.

Furthermore, even though the literal contents of the article 520 (2) (c) of the LeCrim, states that "*any person has the right to choose a counsel and to request the counsel´s attendance in order for the counsel to witness the police and judicial statement issuing formalities, and to take place in any examination of identity that the arrested person might be submitted to"*, this does not at all mean, that the right to be assisted by a counsel is solely limited to these two cases. On the other hand, all other formalities related to the prisoner – such as the reconstruction of the events, witness questionings of witnesses, proposals of tests to be carried out, must be attended by the active attendance of the counsel assisting the person in custody. So is pointed out by the Spanish Constitutional Court in its STC 21/1997, which neither specifies nor it limits what are the police formalities to which the assisting counsel may be related, which entails that a favourable and extensive interpretation has to be carried out.

Finally, the effectiveness and respect required by the Spanish legislation, as to the exercise of the right to be assisted by a counsel are formally stated in the LOPJ (11) (1), which points out that "*in any kind of procedure the rules of good faith will be respected, with no validity of any evidence having been obtained, in a direct or indirect way, through violating rights or fundamental freedoms"*. This means that the necessary evidential value in order to circumvent the presumption of innocence activity cannot be considered without taking into account the tests having been performed under conditions violating the fundamental right of being assisted by a counsel. These provisos, allowing the true content and full effectiveness to rights such as that of being assisted by a counsel, contribute in obtaining what the doctrine of the Supreme Court of the United States calls "*deterrent effect"*, that is to say, they succeed in dissuading Law enforcement officers from being tempted to put off or not to acknowledge, on behalf of an assumed greater effectiveness, the necessary respect of the aforementioned rights.

Therefore, of all what was previously stated, it seems clear, even though access to the prisoner´ s right to being assisted by a counsel is not immediate, calling the Bar is indeed so, and is made in an almost immediate way. This is therefore done with full compliance to what was stated by the European Court of Human rights in its ruling of 24 November 1993, case Imbrioscia, or in that of 8 February 1996, cases Murria and Benner.

Once the reasons that suggest keeping the current system in force are considered, it could be questioned whether there is a need to review such regulation, the review being that of allowing having access to a counsel takes place from the initial moment itself that the police take the person into custody. This, as the CPT postulates, is the only possible guarantee against any mistreatments. The answer is, necessarily, negative. With the system currently in force, there are other activities that are, in an effective way, guarantees against this kind of behaviour being carried out by police authorities. Firstly, the knowledge at all moments of that arrest by the Examining Judge, as well as court-appointed counsel, who are apprised of everything referring to the situation of the arrested person and can, should they deem it advisable, attend the corresponding formalities. Secondly, the possibility for the person deprived of freedom to lodge a "habeas corpus" appeal, in accordance with what is set out by the Article 17 (4) of the Spanish Constitution, and in agreement with what is set out in the Article 3 of the Organic Law 6/1984, of 24 May.

Both ways guarantee in a fully effective and actual way to the person held incommunicado, as much the legitimate right to start investigating procedures, something of key importance whenever offences specified in Article 384 (bis) of the Penal Code are treated, as the absence, owing to prevention and previous and continuous follow-up, of any possible maltreatment.

Finally, owing to the aforementioned reasons, the legislative reform advocated by the CPT is not considered necessary, in the matter of making it compulsory the assistance of a counsel to the arrested person, from the moment that such person enters the detention or custody facility.

Nevertheless, to improve the guarantees of the arrested persons and to respond to the recommendations of the international defence of human rights organisations, especially the CPT, the Spanish Government is going to issue the proposal, in the context of the Human Rights National Scheme, currently in preparatory stage, the reform of the Article 520.4 of the LeCrim in order to lessen the maximum eight-hour period, within which the right to ask for the assistance of a counsel must be exerted.

2. - The second legislative amend recommended by the CPT is that aimed at allowing to access to a **counsel of one´ s choosing**.

With a preliminary character, the first thing to emphasise is that the Spanish legislation does indeed consider this limitation, in an express way, in the Article 527 of the Lecrim, without infringing, therefore, the supranational rules of compulsory fulfilment nor the case law, also of a binding nature, of International Courts, when applied to Fundamental Rights, since the latter do not even grant the detainee the right to be assisted by a counsel, at least in an express way. In fact, the 1950 European Agreement of 1950 does not include this right in its Article 5, within those allowed to the person under preventive custody, neither does the Article 9 of the 1966 International Agreement of Civil and Political Rights. Therefore, the Spanish Laws provide for a wider cover inasmuch as, even though denying free counsel election, it still grants the detainee rights that are wider, than those granted by supranational laws, when granting the right to be assisted by a counsel.

As regards to the reasons for that limitation, they are again grounded in the need to prevent the counsel from being in collusion with third parties in order to hinder the research proceedings success, the counsel being the necessary linchpin of that conspiracy. This suspicion might be considered excessive. However, many years of antiterrorist fight and of experience have shown that, in Spain, the aforementioned suspicion is, unfortunately, but a reality to be reckoned by the laws.

On the other hand, the Spanish Constitutional Court has stated, in its STC 196/1987, as the European Court of Human rights already made in the Artico case, that free election of counsel forms a usual, and not an essential, part of the right. Thus, even though it is true that one of the characteristics that the full exercise of the right to be assisted by a counsel governs lies in the trust-relationship between counsel and client, it is also true, as rightly considered by the Spanish Constitutional Court, that the aforementioned trust-relationship is not as compulsory all along the assumption of an arrest taking place during the first proceedings performed by the police. The role of the counsel is then, according to Article 520 of the Lecrim, "*to ensure, with the counsel´ s personal attendance, that the Spanish Constitutional rights of the detainee are respected, that the detainee does not undergo coercion o r treatment incompatible with his dignity and freedom to issue a statement, and to ensure that the detainee will enjoy due technical advice on the detainee´ s behaviour, on whether to keep silent, as well as on the detainee´ s right to check, once made and concluded in front of the active attendance of the Counsel, the fidelity of what is transcribed in the statement submitted to the detainee to be signed ".*

Furthermore, as stated by the Upper Court, in order to avoid that an excessive lengthening of the incommunicado regime become an "inhuman or degrading" treatment forbidden by the Art. 15 of the Spanish Constitution, *"the incommunicado detainee´ s temporary limitation of his exerting the right of freely appointing a counsel, which does not prevent him to exert this right once such incommunicado regime is over, cannot be characterized as being a unreasonable or disproportionate restrictive measure. It is a weighted conciliation of the right of being assisted by a counsel, the effectiveness of which is not hindered, balanced by the Spanish Constitutional values of the civic security and the defense of the social peace".*

Finally, we do not deem it necessary to review the legislation to the effect of allowing the access of the detainee held incommunicado to a counsel of his own choosing, since the legally established limitation is Spanish Constitutional and in accordance to Law; moreover, the Spanish legislator does not aim at establishing specific ways of assigning the counsel, upon considering that such ways do not alter the essential gist of the Law. A further proof of that is, besides, the fact that once the incommunicado regime time period is over –such period being of short duration, owing to legal imperative– the detainee prisoner recovers his right to choose a counsel whom he might trust. The statements issued to the police are, theoretically, instruments appertaining to the field of research, and lacking evidential value.

3. – The CPT urges finally the Spanish authorities, in this section, to amend the legislation in order to allow for the counsel **to interview** the prisoner **in private**, an issue expressly forbidden up to now by Article 507 of the LeCrim.

The justification is, again, based in the need to avoid awareness of the stage of the research –by outside people, possibly linked to the terrorist organisation to which the detainee is presumed to be related– to bring about that culprits or persons implied in the offence investigated avoid the proceedings of justice, or that evidence of the committed crime are destroyed or hidden.

The effectiveness of the right to be assisted by a counsel is not limited by the detainee´ s prohibition to privately communicate with his counsel; provided that the latter assisting counsel is supplied through the counsel attendance in the place of custody, the aforementioned attendance and the subsequent assistance, in compliance with the content of the Article 520 (6) (information on the rights and final optional interview with the counsel) guarantee that the detainee will not lack any defence, since some of the rights that his counsel will ensure that he is informed of are necessarily those of issuing no statement against himself, of not inculpating himself, and even that of denying to issue any statement within police precincts, owing to which the least evidence pointing to the detainee ´s lack of defence is excluded.

Consequently, it is not considered needed to amend the Spanish legislation in this matter, since the current regulation guarantees the basis or key concept of the right to be assisted by a counsel.

Section 34.

The CPT asks for the comments of the Spanish authorities regarding the questions put forward in sections 29 and ff.

For the CPT, the participation of the legal doctor posted to the competent court is a guarantee inherent to the penal proceedings, something which is strengthened whenever the doctor pays the detainee regular visits. In such case, the aforementioned participation constitutes a guarantee against any possible maltreatment that might be inflicted to the detained person in incommunicado conditions. Such a guarantee, as the CPT repeats, has its preventing nature so far as the legal doctor belongs to an external Body, outside the law enforcement Corps and Bodies; it must thus be effective, and not be hindered in any way.

Furthermore, the Committee has to complain about two questions related to the role of the legal doctor regarding the prisoner in incommunicado conditions: firstly, it reports to have gathered evidence from several arrested persons that alleged that the consultation privacy had not been respected. Secondly, it points out that other interviewed people had stated their doubts as to the doctor´ s professional independence.

In fact, the CPT holds the opinion, stated in section 31 of the report, that the legal doctor plays up potentially contradictory roles while being, on the one hand, charged to inform regularly the competent Investigating Judge about the state of the prisoner, which includes any indications that he might have detected re the eventual suffering of maltreatment. On the other hand, it is the same legal doctor who declares the detained person as "*fulfilling the conditions to issue a formal statement"* to the police, as appears in the custody registry books of the detainees examined by the CPT during its visit.

In view of the allegations made by the CPT, noting the relevance of the legal doctor ´s report and the assessment of his role in order to be a guarantee in view of the maltreatment of which the detainee in incommunicado conditions might eventually have been submitted to, it is of high importance to explain what the **legal status of the legal doctor in Spain is** and, therefore, what his functions are and how he must exert them.

The legal doctor is a civil servant who works for the Justice Administration, and to whom the Article 479 of the LOPJ assigns the duty of assisting or that of performing optional surveillance upon the detainees, injured or diseased, that be under the jurisdiction of the courts and tribunals, as well as the duty of issuing reports and legal medical statements within the framework of the legal proceedings. Whenever their duties are fulfilled while performing procedural or investigation activities of any nature, started by the prosecutor's department, the legal doctors will under the orders of judges, magistrates, prosecutors and civil registrars, and will perform their duties with full independence and applying strictly scientific criteria.

Therefore, two conclusions can *a priori* be inferred from the previously drawn system: first of all, **legal doctors are not part of the police, nor act under their orders;** conversely, they send their reports to the duty magistrate in charge of the detainee ´s case; they do not send them, as seems to be held by the CPT, to the Police. These reports lead, very often, to the need of being ratified –as regards their contents– in the hearings, and are likely to be, therefore, submitted to expert ´s rebuttal evidences.

Therefore, it is not correct to state that legal doctors seem to play a contradictory role in the proceedings: they are professionals who are granted given full professional independence, from law enforcing agencies as well as from Judges, as established in the Article 418 of the LeCrim, that typifies as a serious legal disciplinary misconduct the excess or improper use of authority of the latter towards legal doctors. In fact, the system currently in force is based on the impartiality and appropriateness of the medical assistance provided by the legal doctor, acting as an institution closely related to the Justice Administration and imbued, therefore, with the special impartiality assigned to the Investigating or Sentencing Courts to which they are allocated.

On the other hand, and in order to stress the previous point, it is necessary to emphasise that the Article 510 (4) of the LeCrim establishes the **possibility of being examined by a second doctor**, so that the greater possibility of receiving medical examinations increases the guarantees against any possible maltreatment and, the possibility of counter-examination is thus ensured. This entails an advantage as to guarantee, since the legal authority is fully competent to consider, in each specific case, whether there is needed for two or more doctors to lend optional assistance to the detainee.

Furthermore, **the compulsory demand for reports to be issued in writing** is expressly considered in the Instruction 12/2007, of 14 September 2007, of the Secretary of State for the Security.

Regarding the complaints, issued by several arrested persons, alleging that the privacy of consultations had not been respected, it must be pointed out that legal doctors ´s activities are compliant with what is set out in the Protocol on the detainee ´s examination, approved by Order of the Minister of Justice on 16 September 1997, written according to the recommendations issued by several international organisations, in particular the United Nations and the Council of Europe.

The third item of that Protocol states, literally, that *"the data contained in the Protocol will be confidential. Disclosing facts or data known when exerting that function, and the violation of professional secrecy, will be sanctioned in accordance with what is established in the Organic Regulation of the National Body of Legal Doctors, approved by Royal Decree 296/1996, of 23 February ".*

On the other hand, it is extremely strange, and fully exceptional, for a police officer to be present during the examination of a detained and assisted patient, whatever the situation for the detained person to be in the police precincts. All this, is case of the medical examination being carried out in those facilities, as, otherwise, that is to say, if such examination was carried out within sanitary precincts, under the order of the legal doctor or assigned by the Institute of Legal Medicine dependent on the Ministry of Justice, the possibility of privacy violation is unthinkable.

Owing to all this, it is considered that the practice carried out by legal doctors all along the penal proceedings, and in the assumption of incommunicado conditions, is fully according to Law, as well as offering enough health assistance guarantees, against any maltreatment likely to be undergone by the detainee.

Section 35.

In the section 35 of its report, the CPT recommends that medical forensic written reports be made by the doctor and delivered to the judge.

Regarding the first item, it is necessary to say that, in order to duly perform their duties, the legal doctors issue, as already stated, their legal medical reports and statements within the framework of the legal proceedings, and carry out the periodic control of those detainees injured and the body damage assessment that are the object of procedural activities. They carry also out the investigation and collaboration duties deriving from their own function.

The expert report is a legal-medicine document, where the medical expert states or shapes, in a written way, his professional activity. It will not be enough to provide a mere opinion or guideline: the expert will always have to justify the judgment that he issues, basing it in scientific considerations and from solid and rationally inferred reasoning. The aforementioned report can be issued at the request of private individuals, or by an issuance agreement of a court.

Expert reports are regulated in Articles 456 to 485 of LeCrim which, apart from other aspects, consider their contents. Thus, the report must contain: description of the person or thing being the object of it, in the state or in the way in which it is found. The description will be issued by the court registrar, dictated by the experts and signed by all persons attendant; a detailed relation of all the operations practiced by the experts and of their result, issued and authorised in the same way as in the previous case, and the conclusions formulated by the experts, in view of the data entered into record.

In the civil field, the statements of the experts and their regulation are collected in the Articles 335 to 352 of Law 1/2000, of 7 January, of the Civil Legal Procedure (Ley de Enjuiciamiento Civil, henceforth, LEC), of supplementary application to penal rules. The aforementioned text formulates in a detailed way different aspects of expert evidence determination, among which it emphasises (Article 336) the obligation that opinions be formulated in writing, with the accompaniment, where deemed appropriate, of any other documents, instruments or materials deemed suitable to lend validity to the expert ´s opinion about the facts submitted to expert evidence determination. The statement may have as adjoining documents those considered most suitable in order to allow for a more precise assessment.

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Likewise, the Article 346 of the LEC establishes that "*the court appointed expert will issue his statement in writing, and will have brought to the court within the timetable given him. This statement will be transferred to the parties, if they deem it necessary for the expert to attend the hearing, or the trial, with the aim of providing the explanations or explanations deemed suitable. The court will be able to decide, in any case, through a writ of execution, that it deems necessary for the expert to attend the hearing or the trial in order to understand and assess in a better way the submitted statement ".*

There is, therefore, no procedural difficulty to prevent the detainee ´s the medical examination data to be available to him and also to his counsel. The main issue is for the competent legal body to transfer them the results of the report, by operation of law or at the request of either party, in order to be able to duly formulate, the defence in the procedural step in question. The contrary thing would imply falling into an obvious lack of defence, against the right to effective legal protection guaranteed by the Article 24 (1) of the Spanish Constitution, and, likewise, against the right to use the due evidence means for its defence (Article 24 (2) of the Spanish Constitution) .

On the other hand, it is necessary to remember that, according with what is established in the Article 347 of the LEC, "*in the hearing or trial, the experts will act as required for the parties that the court deems admitted, and the parties and their counsels may ask for the full explanation of the statement, whenever the aforementioned explanation requires performing other operations, in addition to the document submitted, through the use of documents, materials and other elements"*. Likewise, as the Article goes on explaining, the parties may also require an explanation of the whole statement or of some of its items, the meaning of which is not deemed clear enough to the effects of testing the evidence, and they may also issue their objections on the method, the premises, the conclusions and any other aspects of the statement.

Practically, the expert medical report is not only issued in writing, but usually has a general structure, in agreement with what the rules in this matter directly require. Thus, it is usual for the report to be itemized as follows:

- <u>An Introduction</u>, that begins with the name or names of the intervening experts, recording their qualification other data of personal nature (national identity document, home for notification purposes, etc.), as well as the object matter of the report, and the authority or the requesting the report. Furthermore, in accordance with the Article 335 (2) of the LEC, it must contain the clause that, under oath to formulate the truth, the expert has proceeded with his utmost objectivity, considering both what may favour as well as what may damage any of the parties, and the clause that he is aware of the penalties which might be incurred should he not fulfill his duties as an expert.

- An exposition part, with a detailed listing of all the documentation included with the aim of it being prepared: full clinical history, other medical reports available, as well as other not strictly medical documents, such as statements from witnesses or from health care staff, should there be any.
- An assessment part, essential, in which the nature of the damage or the harm caused is explained, as well as its assessment.
- Conclusions, which are the result from the reasoning followed in the assessment part.
- An end part, with the usual end formula, followed by the date of issue and by the author´s signature.

Therefore, from the analysis of the current Spanish rules in Spain and from the procedural praxis, it is to be inferred that the legal doctor must (and does) issue his reports in writing, and that, furthermore, the law makes it compulsory for him (Article 262 of the LeCrim) to report immediately any public offence of which he takes notice owing to his position, his profession or his job.

Section 36.

The CPT asks the Spanish authorities to ensure that all people kept in incommunicado conditions enjoy the right to be examined by a doctor of their own choosing.

In this matter, the Spanish legislation is very clear; so, the LeCrim, (520) (2) (f) states that the prisoner has *"the right to be examined by the legal doctor or by his legal substitute, and, by default, by the one working in the institution wherein he is, or by any other one, working for the State or other Civil services".*

From the analysis of this article a series of consequences are extracted, of use to answer what is put forward by the CPT report. Thus, the first thing inferred is that the right of the prisoner to a medical examination is one arising from the moment itself that the arrest is carried out, that is to say, since the detained person is deprived of his freedom of movement.

In a parallel way, the authority under the order of which the detainee finds himself is submitted to the duty to enable the full exercise of such a right through the health care staff to which the law entrusts the implementation of the examination and who are, in order of decreasing preference:
a) the legal doctor or his legal substitute;
b), should this doctor be not available, the doctor appointed to the Institution where the detainee stays, who will be the legal doctor himself or his legal substitute if the detainee is in the Court facilities, that of the Police or the Civil Guard, if is in the facilities of one of these Bodies, that of the City Council, if he were at the council facilities, or that of the prison or internment centre where he may be staying when he required the examination to be performed;
c) in default of the previous ones, any other member of the medical staff employed by the State or by other Civil Services.

The LOPJ in its Articles 497 and ff., as amended by the Organic Law 16/1994, of 8 of November, states along the same guidelines, assigning prisoners´ assistance or medical surveillance to legal doctors.

The application, in literal terms, of the CPT ´s recommendation to detainees in incommunicado conditions leads to the serious drawback of enabling the possible use of the "doctor ´s confidentiality" as a link with the organisation, which would invalidate the concept itself of incommunicado incommunicado regime , with the consequent risk to hinder police investigations and to enable evidence to be destroyed, or relevant indications of the offence to be concealed.

Finally, in view of these forecasts and the precision with which they are considered in the Law, it is not deemed necessary for the detained person in incommunicado conditions to be examined by a doctor he trusts, as the fact has previously been stressed that due health care assistance is sufficiently guaranteed by the professional treatment given by any legal doctor, who very probably it has a greater knowledge of the possible sequels that any act of torture or maltreatment might trigger, and who can, furthermore, if it be necessary, inform the legal authority of the convenience of transferring the prisoner to a hospital meeting the necessary conditions for his adequate treatment.

It must be added to these statements that, once established by **the legislator that medical examination may only be performed by a member of the medical staff employed by the Public Civil Service, this entails for any doctor providing his professional services therein, and who is required under such proviso, acquires, "ipso facto", as to penal effects** (Article 24 of the Penal Code) **the nature of a civil servant,** and therefore **the defaults or resistance that might be noticed while in the performance of his duties would constitute acts leading to an offence of contempt, resistance or infringement.**

Finally, the fact that the legislator establishes, in principle, who doctor assigned to carry out the detainee ´s examination is **does not prevent his counsel, in case of noticing any differences between which is stated in the certificate of the member of the health care staff and what he appreciates by himself, from being able –and obliged– to require an additional medical examination, performed by the same or by another member of the medical staff, also dependent on the Civil service**. In case of his not obtaining the aforementioned second examination, the counsel should, once more, address immediately himself to the Duty Court, in order to state before the latter the irregularities that he deems committed, in order for the Judge, if he considers it appropriate, to arrange for a second examination as soon as possible.

Nevertheless, with the aim of strengthening all the existing guarantees, the Spanish Government will foster, within the framework of the National Scheme for Human Rights, the following measures, related to the medical assistance to prisoners:

a) Necessary legal amendments will be proposed, to make it easier to the isolated prisoner the possibility of being examined, in addition to by legal doctors, by another doctor assigned to the public health system, freely chosen by the head of the future National Mechanism for the Prevention of Torture.

b) A Protocol regulating the implementation of the prisoner ´s medical examinations will be approved, establishing the minimum medical checks to be made by the legal doctor, and the standardised forms to be filled in.

Sections 37 to 40.

In section 40, the CPT recommends the Spanish authorities "that clear regulations be established in the way in which interrogations must be carried out by the officers of the law enforcement Corps and Bodies ". It likewise indicates that the regulations will have to expressly forbid blindfolding or putting hoods over the heads of people under police custody, even along the interrogations; it should also be forbidden to oblige arrested persons to carry out physical exercises or to be kept standing up for prolonged periods of time ".

The CPT bases its recommendation on the allegations made by several arrested persons having undergone the aforementioned police interventions, and who stated having been submitted to prolonged questionings for several hours running, standing up, and hooded or blindfolded, while some of them were obliged, furthermore, to do work-outs or to assume a crouching position. In the case of a woman, as the report indicates, she affirmed to have been obliged to do work-outs and balancing, alternatively upon one and the other leg, after her clothes were put off and she was blindfolded (section 37).

Moreover, the CPT states having found elements in the reports of the legal doctors and in the detention files kept by the Civil Guard Central Section of the Information Service in Madrid lending consistence to the aforementioned allegations. Thus, as an example, it emphasises that several of the entries in the detainees´ custody register seem to indicate that interrogations took at all hours of the day or the night, with a duration of up to 5 hours, and without the attendance of a counsel, this being based on the notes existing in those books as of "issues a statement" and on others as of "issues a statement with counsel", with a large time range in the detention files.

As a result of everything already noted down, the CPT asserts its having no doubt that most detained persons were interrogated, generally on several opportunities, before issuing a formal statement in the presence of a counsel, which it consider unacceptable (section 39). Furthermore, it deplores that officers in the law enforcement Corps and Bodies blindfold or hood arrested persons.

Regarding the specific maltreatment allegations formulated by the detainees on 28 March and on 1 April 2007, and the circumstances related their issuing statements, full information has been offered in response to section 22 of this Report.

Regarding the express CPT recommendation to the Spanish authorities, relating to the need for the latter to issue clear regulations about the way in which interrogations must be carried out by the officers of the law enforcement Corps and Bodies, it is again essential to refer to the extensive framework for the protection of the rights of arrested persons in Spain.

From an international viewpoint, the reference level is set by those regulatory instruments ratified by Spain and built into our own legislation, such as the 1948 Universal Declaration of Human Rights; the 1966 International Agreement for Economic, Social and Cultural Law; the 1950 Agreement for the Protection of Human Rights and Fundamental Freedoms or the 1987 European Agreement for the Prevention of Torture and of Inhuman or Degrading Punishment or Treatment.

This international legal framework also sets a series of **rules of professional ethical behaviour applicable to police work** –in order to avoid any burst up of arbitrary behaviour and to prevent and remove torture and other kinds of treatment or punishment deemed cruel, inhuman or degrading punishments– which have underlain the governing criteria of Spanish internal legislation.

Thus, the Organic Law 2/1986, of 13 March, of Law Enforcement Bodies and Agencies, states in its Article 5 that: "*The basic acting principles for all the members of the Law Enforcement Bodies and Agencies are: 1. Compliance with the legislation, and especially: (a) Carrying out their function with absolute respect for the Spanish Constitution and the rest of the legislation"*, as well as *"(b)Acting with impartiality and with no discrimination whatsoever based on race, religion or opinion, and behave with integrity and dignity"*. Furthermore, they must avoid any improper, arbitrary or discriminatory practice entailing physical or moral violence, maintain themselves at all times correct and conscientious when dealing with the citizens, and protect the life and the physical integrity of the people whom they arrest or that are found under their custody, respecting their honour and dignity.

Further on, section 3 (c) of the same article, related to the "treatment of the detainees", states that "*They will carry out, complying with due diligence, the formalities, deadlines and requirements established by the legislation, whenever they proceed to detain a person"*.

And, finally, Article 11 (1), already repeating what is established in the Article 104 (1) of the Spanish Constitution, states that *"the Corps and Bodies in charge of State security have as their mission that of protecting the free exercise of rights and freedoms, and of guaranteeing civic safety"*, which is, as well, the consequence of the statement in the Art. 53 (1) of the Spanish Constitution: "the rights and freedoms (…) are a requirement for all public authorities". Therefore, among the tasks assigned them are those of keeping and restoring civic order and safety, prevent the perpetration of criminal acts, and investigating the committed offences in order to discover and arrest the presumed culprits, as stated in Article 11 (1) (e-f-g).

Within the territories of the Autonomous Regions that, according to the possibility stated by the Article 149 (1) (29) and to what is established in their Autonomy Statuses, have their own Police bodies, some of the tasks entrusted to State law enforcement Corps and Bodies are carried out by the members of those autonomous Police bodies, which have to abide by the prohibition of maltreatment stated in their respective laws: Law 19/1983, of 14 July, for the Mossos de Escuadra of Catalunya, Law 4/1992, of 17 July, for the Ertzaintza of the Basque Country and Statutory Law 1/1987, of 13 February, for the Statutory Police of Navarre. To what has been said it is necessary to add that the Royal Legislative Decree 781/1986, of 18 April approved the Consolidated Text on current measures in force related to matters of Local System, the Article 173 of which states that "Local Police will carry out its duties in accordance with what the Organic Law of Law Enforcement Corps and Bodies establishes".

Finally, it is necessary to emphasise that many Autonomous Communities have passed Laws on the matter of Co-ordination of the Local Police bodies, and that the Spanish Constitutional Court has had the opportunity to refer to this matter in its rulings SSTC 25/1993 (Murcia), 49/1993 (Baleares Isles), 50/1993 (Asturias), 51/1993 (Extremadura), 52/1993 (Madrid), 81/1993 (Andalusia), 82/1993 (Valencian Community), 85/1993 (Catalunya), and 86/1993 (Galicia).

Besides that, the penal procedural legislation also upholds identical guidelines, in order to underlie the behaviour of the Law enforcement Corps and Bodies. This is the case of the Article 287 of the LeCrim, which points out that "*the officers who constitute the Judiciary Police department will carry out without undue delay, and according to their respective functions, the enquiries that they are entrusted by the civil servants in the Public prosecutor's department, to investigate whether an offence has been perpetrated, and to ascertain the identity of the perpetrators and of all the other persons who –all along the course of the ongoing case– are under investigation; this task will be entrusted them by the investigating and local magistrates"*.

But the laws do not only assign these tasks to the Law enforcement Corps and Bodies, but also establish a punishment for those behaviours entailing any infringement of rights. In the case of the Civil Guard, the Article 7 (6) of the Organic Law 12/2007, of 22 October, on the disciplinary régime of the Civil Guard, typify as very serious misconduct, that is to say, entailing a possible application of the sanction of dismissal from service, "*the inhuman, abusing or degrading treatment inflicted to the people under their custody, or with whom they relate due to their performing their service".*

Something similar is foreseen for the National Body of the Police, since the Article 27 (3) of the Organic Law 2/1986, of 13 March, on Law enforcement Corps and Bodies, considers too as a very serious misconduct "the improper use of their functions and the inhuman, degrading, discriminatory or abusing treatment inflicted to the people under their custody".

Furthermore, the Articles 173,174 and 607 of the Penal Code typify the offence of torture considering in an express way the possible punishment deriving from the improper use of authority while carrying out police interrogations, in any way that could lead into any kind of coercion or threat, something which includes carrying out interrogations in places or under conditions that make an attempt on the dignity of the person.

Likewise, the Instruction 12/2007 issued by the Secretary of State for Security on the Behaviour Required from the Members in the State Law Enforcement Corps and Bodies to Guarantee the Rights of the Persons Arrested persons or under Police Custody establish:

"The spontaneity in issuing statements will be guaranteed, in order not to lessen the decision capacity or sense of the detainee. He will neither be admonished nor reprimanded. He will be allowed to make the allegations which he considers suitable for its defence, a fact which be established in the minutes. If the detainee shows signs of fatigue, due to the protracted character of the interrogation, the latter will have to be put off until he recovers.

Our legislation categorically forbids the use of any physical or psychic extremity in order to obtain a declaration from the detainee, hence resorting to such means is an infringement having penal or disciplinary nature, and will be prosecuted as such."

Therefore, all the previously mentioned rules entail the remarks characterising the practice of interrogations in Spain, remarks that are cited below and prevent any possibility of carrying out any interrogation which could constitute an instance of *fait accompli* (a course of action with no legal warrant, and circumventing lawful procedures). Some of these remarks answer the issues put forward by the CPT:

a - **Identification of the police officers being present when the statement is issued**: The Instruction 13 /2007, of the Secretary of State for the Security, relating to the Use of the Number of Personal Identification on the Uniforms worn by Law Enforcement Corps and Bodies establishes the obligation for all members in the Law Enforcement Corps and Bodies wearing a uniform, which includes the members of special units such as the anti-riot unit, to have on their uniforms their personal identity number, which will allow for improving the citizens´ guarantees of being able identify at any time, through that number, the police officers, preventing incorrect activities to occur under the cover of anonymity.

b - **Places where statement taking can be carried out**: They are only the facilities enabled to that effect within police precincts.

c - **Respect for human rights during statement taking:** It is required by the whole of our legislation and, especially, by the basic acting principles gathered in the Organic Law of State Law Enforcement Corps and Bodies and in the Instruction 12/2007 of the Secretary of State for the Security. It does not appear necessary to list in an express way, in order to generate another regulation, all the activities obviously constituting an infringement thereof, such as blindfolding or the use of hoods, making the detainees stand for long periods of time, etc.

c - **Compulsory Attendance of the counsel,** this having a tuition nature, as much from a technical standpoint as to relates to the police authorities´ action. Thus, it is the counsel who has to take care that the detainee physical and psychical state is adequate to issue his statement, in order to which he will have to request, if he deems it necessary, a medical examination. In case of his disagreeing with the results of such examination, the counsel will be able to lodge his protest and the reasons thereof in the formal minutes, hereby informing the Judge on duty of the irregularities that he could have detected. Furthermore, it must be said that whenever the detainee is in need of medical assistance, this takes priority over any other consideration, and furthermore, its being lent does not interrupt the maximum detention time, nor prevents the detainee to be brought to the Court.

d – **Establishing reasonable limits as to the duration of the interrogations, providing, in any case,** rest periods and recesses among them. Thus, the Article 393 of the LeCrim establishes that, whenever these interrogations are going to be of prolonged duration, or the person undergoing the interrogation loses the clear-mindedness assumed necessary to answer to what he will be further asked, the examination must be detained, allowing the person the time necessary to rest and recover his mind. The questioning will proceed anew only when the detainee finds fit to undergo it.

It is true that the law does not expressly include any guideline on questioning people who are, as alluded to by the CPT said, under the effects of drug or of alcohol. However, legal considerations do not constitute the appropriate instrument to solve these issues, as it must include rules which cope, in a general way, with these kinds of behaviour, so that the latter may be made referred to in lower level instruments. In that sense, the "Criteria relating to carrying out preparatory inquiries by the Judiciary Police department, and to quick Trials" do indeed contain indeed, in the section referring to arrest and information of rights procedures, an express mention to the need to respect in any case the detained person honour and dignity as well as to refrain from the use the force "*except insofar as the one strictly necessary to carry out the arrest, in a proportional amount to the resistance exerted by the detainee, as well as it might be needed in order to apprehend his person, and ensure the integrity of the officer who carries out the arrest*".

The same thing applies to the Instruction 12/2007 of the Secretary of State for the Security, which establishes that *"our legislation categorically forbids prohibits resorting to any physical or psychical excess to obtain a statement from the detainee", hence the use of such resources is a penal or disciplinary infringement, and will be prosecuted as such. In fact, it points out the Directorate-General of the Police and the Civil Guard "will adopt internal affairs regulations to guarantee the immediate detection, follow-up and control –at their different hierarchic levels– of those cases that may imply acting in excess of the officer ´s powers or infringing the rights of the people under police custody, as well as of the charges or legal requirements lodged against the members of the State Law enforcement Corps and Bodies, because of their interventions"*.

Furthermore, the Instruction does establish the obligation that, whenever arresting people seriously affected by the alcohol or drugs consumption, or suffering from any kind of mental disease, even of transitory nature, the person be transferred to a health centre with the utmost urgency. This is something which, given an extensive interpretation, is also and by analogy applied to interrogation procedures.

e – **Checking in the amount of statements issued by the detainee,** provided that the latter allow it, in order to find out the facts, always with the counsel ´s attendance. Furthermore, whenever terrorism related offences be tackled, the detention time may be lengthened up to five days, and the detainee can, logically, be interrogated during this time period.

f - **Need to follow the formal guidelines stated in Articles 388 and ff.:**

1 – Ask the detainee the corresponding questions in a clear way, requiring from him to answer them, if he wishes to do so, in the same way (Art. 387 LeCrim). He is not to be urged to say the truth, because this is in contradiction with the right to remain silent and not to declare himself guilty.

2 – Ask, first of all, the initial questions relating to the personal details, status and nature, in order to facilitate the detainee ´s identification.

3 – Ask the questions constituting the interrogation, once the identification has been carried out, in a clear, non specious way, and without any urging upon the detainee.

4 – Not to admonish the detainee, even though he may indeed be warned about the contradictions incurred by him. The detainee must be made aware of the effects and instruments of the offence, so as to allow him to allege what he considers suitable.

5 – To allow the prisoner to issue his statements, always with the necessary assistance, all the times he wishes, and on all matters he considers appropriate, in order for him to give the explanation of facts that he considers suitable, including his exoneration.

6 – Allowing the detainee to use notes to answer the questions, so that, in theory, either he or his counsel dictates the answers. Questions and answers have to be fully set down, in any case, in the most literal way as possible.

7 – Allowing the detainee to abide by his right to perform in Court those proceedings requiring special means, for example, to carrying out calligraphic tests, blood sampling, reconstruction of the facts, or similar proceedings. Therefore, the detainee cannot be obliged to perform them, which does not prevent facts to be reconstructed, without the attendance of the detainee (Art. 333 Lecrim) or entering and searching the detainee ´s home (Art. 569 Lecrim), even though when these proceedings take place in police precincts must, the detainee ´s counsel must be present in any case, if the latter considers it convenient for his clients´ rights.

8 – There is the duty to take statements of truth in writing, to be signed by all present in each one of the practiced proceedings, in a text that must be immediately written down, with end notification of all mistakes which could have been found. In any case, a clear determination of the time invested in the interrogation must be entered, and the detainee or his counsel should be able to read the document before signing it. Otherwise, the minute will be read in full by the civil servant acting as secretary of the proceedings, a fact that must be duly noted down. Moreover, the STC 21/1997, in its Legal Basis 5, states as a right benefiting the detainee the reading of minutes by his counsel, and checking the fidelity of what is transcribed in the minutes of the statement of truth given him to be signed.

Consequently, we do not share the assumption that the counsel has a passive role in the taking of statements, since he has a highly important reaction capacity in various aspects as, for example, detecting and reporting any possible maltreatment. Likewise, before signing the minutes, he is endowed with the power to request extensions or explanations of the declarations thereof and, in any case, that of recording in the aforementioned minutes every irregularity that he has noticed.

Finally, from all this it may be inferred that it is not necessary to review the rules in the matter of police interrogations. However, it is admitted, insofar as specific aspects pointing to it are detected, the possibility of improving those Criteria and Instructions likely to be improved.

In support of the extensive regulation existing in Spain in the matter of police interrogations, it is necessary to emphasise that, with the same fullness and detail, this is one of the compulsory contents of any Training Course given to the law enforcement Corps and Bodies, in compliance with what is established in the Article 6 of its Organic Law, stating that the latter will have professional and permanent nature, and be adapted to the principles indicated in Article 5, among which, and to the effects that this section of the report is purported to indicate, two main issues are emphasised:

- Getting adapted to the legislation, which implies as well the task of performing their duties with the utmost respect of the Spanish Constitution and the rest of the legislation, acting with no discrimination whatsoever based on race, religion or opinion, and considering as binding the hierarchy and subordination principles.

- And the treatment of detainees, a principle considered as such in the Law and from which are inferred the obligations to duly identify themselves after carrying out an arrest, to protect the life and physical integrity of the people detained or under their custody, with full respect of their honour and privacy, as well as to carrying out and abide with due diligence the proceedings, detention times and requirements established by the legislation, whenever they should arrest any person.

The aforementioned training is given as much in the area of the national Police as in that of the Civil Guard and has as its aim:
- To train the new Police officers in the matter of Human Rights, so that they form a living part of the centre.
- To guarantee the incidence of Human Rights in the practices offered by the centre.
- To foster Human Rights respect in their regulated training, from all the curriculum subjects, on the basis that an injury relating to Human rights means a failure in the whole police organisation.

- The insertion of Human Rights training through subjects like ethics, professional deontology and victimology, as much in entrance training as in the update or ongoing training, and the training for promotion.
- In entrance training of income, attention is paid to the kinds of behaviour of the students aiming at police positions in order to detect, and, where appropriate, to correct from the beginning, attitudes and behaviour being racist, xenophobic, authoritarian, misogynist or violent, incompatible with the police model of the service of the National Police and, generally, of all law enforcing Corps and Bodies.

It is consequently needed to infer, from the aforementioned considerations, a clear message: The entailment of the Judiciary Police department, regarding police interrogation, to its functional dependence towards judges, courts or members of the Public Prosecutor's department competent in the matter being investigated is already a legal guarantee by itself, since they report about their investigation work and are fully accountable of the final result of their activities to the aforementioned magistrates. Secondly, the express mention, in a regulation with legal rank, to the need for the Law enforcement Corps and Bodies to respect in all their activities, including that of interrogation, the physical integrity of the detainee and the training given them in this matter.

Section 42.

The CPT recommends adopting those measures necessary to ensure that data registering within the context of the custody in incommunicado regime be substantially improved system, by the officers of the law enforcement Corps and Bodies.

In a particular way, the CPT indicates that *"it should be required to keep in a systematical way a registering the time in which interrogations begin and are over, together with any request made by the prisoner during his interrogation, and the people attending each interrogation"*.

In order to improve the already existing guarantees and to comply with the CPT recommendation, **the Secretary of State for the Security is going to dictate, in imminent date, a new Instruction amending the current regulation of the books of "register" and "detainee custody"** existing in all police stations to extend the information that they compile and, in particular, to be able to know in a reliable way, and along all the time, the occurrences that happen in the time range gone between the arrest of a citizen and his bringing him before the courts or his being set free, all this with the main purpose of guaranteeing the detainee ´s rights to improve the further control of police activities.

This amendment aims at obtaining that the books facilitate full and detailed information on the detainee ´s custody proceedings, in such a way that, by perusing the latter, it might be known the identity of the police officer in charge of the custody at each moment of the detainee ´s stay in the police stations, and of his transfers. To that effect, each change of custody, and the indication of when it actually happens, could be written down.

Section 43.

The CPT recommends the arrested persons kept in incommunicado conditions to be correctly informed of their situation and their legal rights.

To answer this recommendation, repeated, moreover, in the section 40 of the CPT report, the starting point in this matter must be the Article 55 of the Spanish Constitution, which establishes that by means of an Organic Law there could be determined the way and the cases in which, individually and after the necessary legal intervention and the suitable parliamentary control, the rights acknowledged in the Article 17 (2) may be cancelled (as to the duration of the detention), those in the Article 18 (communications secrecy) and in the Article 18 (3) (home immunity), related to the investigations against armed gangs or terrorist criminals.

In this sense, the Article 520 (bis) of the LeCrim includes the possibility of lengthening the maximum detention time and of deciding on the incommunicado detention. As a result of this provision, the prisoner in incommunicado conditions is deprived, in an exceptional way, of the following rights, that other prisoners do have granted:

a) Be granted comfort or occupation compatible with the motive of his detention.

b) To be visited by a minister of his religion, a doctor, or relatives or people that may give him some advice.

c) To correspond and communicate (in the case of the detainees under the general regime, this must be expressly authorised by the judge, as established in the Article 527, referring to the 524).

d) To have no special safety measure adopted against him (something from which the detainees under general regime are also excluded, in case of disobedience, violence, rebellion or having tried to escape)

e) To choose a counsel of his own election (527a). He will needs de assisted by a court appointed counsel.

f) To have a relative informed of the fact that he has been detained, and of the place wherein he is in custody (Article 527 b, referring to the Article 520 (2) (d))

g) To be privately interviewed by the counsel of the defence, once the proceeding in which he would have taken part is over.

As may be noticed, the persons detained in incommunicado conditions are not submitted to any limitation of the right to being informed of their situation and their legal rights, which is referred in an express way by the Article 520 of the LeCrim, providing that *"any detainee or imprisoned person will be immediately informed, in a way he understands, (…) of the rights granted him, and especially of the following:… a)..,b)…,c)…, …f)"*.

Contrarily to what is usually said to occur practically, our procedural criminal legislation does not deal with the detainees´ rights only in the Article 520 of the LeCrim but does so, besides in that provision, in its six following articles, notwithstanding other concordant provision in this Law and in other connected measures. But, furthermore, within the rights compiled in the aforementioned article, those usually shown as typical for detainees are only a part of all that the provision acknowledges. Specifically, the category of "detainees ´ rights" is usually assumed to be restricted –

forgetting other rights that the Article 520 also considers– only to those rights respect to which the article itself requires as compulsory to inform "in an especial way" to the detainee, being the ones in it referred to in the letters "a" to "f" of subsection 2 (the right to be silent, not to declare against himself, to request the assistance of a counsel, to communicate his personal situation and the place wherein he is under custody, to be freely assisted by an interpreter and to be examined by a doctor)

On the other hand, beyond these rights about which any detainee must be "especially" informed, our procedural legal system offers a more complete list in the matter of the rights that are enjoyed by the detainees, and which constitute a guarantee framework wider than the one that might be assumed at first sight. In this sense, the Article 520 (1) establishes that "*the arrest and the provisional imprisonment will have to be carried out in the less harmful way for the detainee or the prisoner, both as regards his own person, reputation or patrimony"*, as well as that *"the pre-trial detention will not be able to last more than the strictly necessary time required to carry out the inquiries in view of elucidating the facts"* . The detainee must be, as a general rule, either set free or brought before the legal authority, "*within the terms established in this Law and, any case, within a maximum seventy- hour term "* (article 520 bis), the legally considered cases for term extension being considered.

By itself, the Article 520 (2) makes it compulsory for the detainee to be informed, besides about his having the rights especially referred to in the letters "a" to "f" of this section, also about what facts he is accused of, what are the reasons motivating the curtailing of his freedom and, as it has been put forward, "on the rights that he is entitled to", this last statement implying that he must be informed of those other rights of which he is entitled, which are those of the Article 520 (1) (relating to the way of carrying out the arrest and to the length of the detention term), 520 (3) (if the detainee is a minor), 520 (4, 5, 6) on the particulars and the contents of the right to be assisted by a counsel, to request an "habeas corpus" (correlatively to the right that the Article 520 bis (3) grants the Judge as to getting to know, personally or by proxy, what the detainee ´s conditions are), to the right to be set apart from other detainees according to the detainee ´s education level and age, and to the nature of the offence attributed to him (Article 521), to the right to get, at his own charge, the comforts or occupations compatible with the establishment regime, and the safety conditions (Article 522), to the right to write to the Judges and the competent Magistrates (Article 524), and to the right not to undergo extra security measures, apart from the cases foreseen by law (Article 525).

However, despite the fact that the LeCrim theoretically sets a system for informing the detainee of his rights, enabling him a fairly full knowledge of what he is granted to do, the procedural rule does not consider any right ownership that would perhaps close the system, inasmuch as that such right would act as general guarantee ensuring the effectiveness of the others. That omission is that of mentioning the right to foster, wherever appropriate, a "habeas corpus" procedure, as established by the Organic Law 6/1984, of 24 May, regulating this institution, and which ought perhaps to be included in the legal foreseen revision of the LeCrim.

It is likewise necessary to emphasise that, **in practice, specific instructions exist and are applied, so that civil servants adjoin to police formalities the corresponding minutes of having informed the detainee of his rights, it being also customary to inform him again of these rights in front of the counsel, and to show him, in case he would require so, the corresponding minutes.**

It is thus a usual practice to fulfill these instructions by police officers, this being duly carried out as much in the theoretical as in the practical stage of the training of the National Police officers.

In fact, the National Commission of Co-ordination, to which have been assigned several duties from the Article 36 of Royal Decree 769/1987, of 19 June, approved the already mentioned "general criteria to the Judiciary Police Department for carrying out procedures, and for the fast and immediate trial of certain offences and misconducts".

In both models, the detainees are informed of the rights that they are entitled to, according to their procedural situation, and that are gathered in the Articles 520 and ff. of the LeCrim, as is, furthermore, established in the Instruction 12/2007 (3) (1), of the Secretary of State for the Security, stating that "once the arrest is carried out, the detainee will be immediately informed –in a language and a way understandable to him– of the list of his rights contained in the Article 520 (2) of the LeCrim, of the facts attributed to him and of the reasons motivating his freedom to be curtailed".

But, furthermore, the Instruction 12/2007 contains a remarkable novelty, showing the constant concern of the Spanish authorities regarding the guarantee of the rights of the detainee and forbidding any behaviour entailing lack of defence or maltreatment of the detainee. Therefore, it has introduced the requirement to inform the prisoner of his right to apply for a writ of "habeas corpus", thereto supplying a specific form model.

By itself, section 8 (e) of the so called "General criteria", relating to the arrest and information of rights, determines that such information must be carried out in an immediate and understandable way, stating it clearly in the minute of the initial occurrence, without prejudice of further information of rights, also to be documented, on arriving in the police station.

This information of rights is repeated whenever the detainee is transferred to other police facilities, being at the moment set in writing in separate minutes, to be signed by the detainee. The detainee will be informed again of the rights he is entitled to, in attendance of his counsel, when issuing his statement.

From a formal viewpoint, these guarantees come together with the fact that each of the standardised models aforementioned has a space to identify the officers carrying out the arrest, as well as to identify the place and time in which such a fact occurs. In case they are not those who perform the inquiries, it should be written down that the detainee(s) are brought to the person in charge of the enquiries, together with a detailed list of the personal effects having been seized.

Finally, it is necessary to add to the aforementioned things that the reading of rights is stated in at least in 26 languages, and that the other formalities may be entered and copied in any way allowing for its safekeeping, such as a hard drive, a mini-disk, a RAM memory, etc.

Finally, the communication to the detainee in incommunicado conditions of all information related to his rights occurs in a usual and fully normalized way, as applies to the rest of the detainees; all of them must sign the corresponding document –the so-called "Detention and Information on rights Form" approved by the National Commission of the Judiciary Police– by which they acknowledge the receipt of that information. The aforementioned proceeding of information of rights is adjoined to the police report addressed to the Court trying the case.

Sections 44 to 46.

The CPT requires, firstly (Section 45) full information on the detention of a minor in June 2004, who was kept as a detainee for 38 hours in the facilities of Guzmán el Bueno 1, being suspect of collaborating with an armed gang. Likewise, as stated in the report, it would seem that the detained person gave a prolonged declaration to the Police, before being brought to the Prosecutor of Minors Office.

Once this has been established, in response to the CPT requirement, it must be pointed out that the person referred to by the CPT, a minor, was actually arrested in June 2004 in the course of the investigation of the 11-M attacks, and by officers of the Information Service; he was accused of having taken part in transporting the explosives employed in those terrorist actions, a charge for which he was afterwards sentenced by the Central Court for Juveniles in Madrid, according to a conformity ruling, to six years of internment in a closed regime centre, as established in the Article 7.1 of the Law of Penal Responsibility for Minors.

His detention was attended by members of the Team for Women and Minors (EMUME) of the Organic Unit of the Judiciary Police of Gijón, according to what is set out in the Article 17 of the Organic Law 5/2000, of 12 January, of Penal Responsibility for Minors (henceforth, LORPM).

As soon as the detention was carried out, the detainee was informed of the motives of such measure, as well as of the rights he is entitled to; he was fully cognizant of these issues, and it was applied him what is set out in the Organic Law 4/1988 of 25 May, and the Articles 384 bis, 520 bis, and 533 of the LeCrim.

The Central Court for Minors applied to the minor a previous incommunicado regime as soon as he was detained, as it was assumed that there were enough indications pointing to his presumed participation in terrorist acts, in a particular way in the attacks taking place on 11 March 2004 in Madrid, of which he was also informed. It is to be recalled that this possibility of incommunicado detention of minors is expressly considered in the Spanish legislation, which in the Article 17 (4) of the LORPM establishes:

"Detention of a minor by police officers will not be allowed to last longer than the time strictly necessary to carry out the procedures to elucidate the facts. In any case, within a maximum twenty-four hour term, the minor detainee will have to be released free or brought before the Public Prosecutor's Department. Whenever appropriate, the Article 520 bis of the LeCrim will be applied, attributing competence for the rules foreseen in that provision to the Judge of Minors ".

Likewise, the Instruction 12/2007, of the Secretary of State for the Security relating to the behaviour required from the members of the State Law enforcement Corps and Bodies, in order to guarantee the rights of the persons arrested persons or under police custody also establishes, in section 9 of its Instruction 5, that when the reason motivating the arrest is that of being charged of a terrorism offence, it is possible to request from the Judge the incommunicado regime and the extension of the detention term of the minor, in accordance with what is set out in the LeCrim, after previous communication to the Prosecutor for Minors of the Audiencia Nacional.

The incommunicado regime was decreed by the Central Court for Minors in charge of the case, while the detainee was never hooded, nor blindfolded, as all procedures complied with the requests established in the current legislation in force. Thus, the detainee was entitled to the following rights:

- To keep silent and not to issue any statement, should he not wish to do so, not to answer to any or some of the questions formulated, or to declare that he would only issue a statement at court.
- Not to declare against himself and not to be declare himself guilty.
- Be assisted by a court-appointed Court-appointed counsel in the police and legal procedures of statement and intervention in any identity examination that he would undergo.
- To be assisted, charge free, by an interpreter, when he would be a foreigner not understanding or not speaking Castilian Spanish.
- To be examined by the legal doctor or by his legal substitute, and, by default, by the one working for the Institution wherein he be, or by any other employee of the State or of other Civil Services.

Afterwards, the detainee was moved, by duly escorted direct special direct transfer to the Directorate-General of the Civil Guard, with no kind of incident occurring during the transfer. The detainee entered the prisoner ´s custody premises of the aforementioned precincts at 19:30 hours of the 14 June 2004. An hour later, the attendance of a Court-appointed counsel was requested to witness the procedures that the detainee was to be subject to, at 10:00 of the 15 June. Then, at 21:00, the detainee underwent an examination performed by a legal doctor assigned to the Audiencia Nacional, with no incidence detected.

At 9:40 hours of the 15 June 2004, a writ issued by the Central Court for Minors was received, according to which the legal authority mentioned ratified the detainee ´s incommunicado regime, assuming that measure as proportional, necessary and appropriate and, above all, owing to the lack of negative consequences of it, due to its duration and the cautions determined, something of which the detainee was immediately informed.

Later on, the Central Court for Minors was requested to enlarge the detention term for an amount of 24 hours, which was authorized by the Judge at 14:30 hours of the 15 June, due to the complexity of the matter, the number of detainees, the amount of documentation seized in the searches carried out and the seriousness of the facts investigated, of all of which issues the minor being immediately informed.

Regarding the examination of the minor, it was carried out before the Public Prosecutor (reform dossier 3/2004, see Annex 3), who lent his assistance on behalf of his parents, and before the chosen Court-appointed counsel. A new reading of the rights entitled to was carried out, and the detainee was fully aware of his rights. The examination duration was sufficient, and also registered, beginning at 11:30 hours of the 15 June and finishing at 13:35, with a rest pause from 13:00 to 13:20. The minor was again examined by the doctor at 19:55 hours, with no incidence observed.

Once the corresponding procedures were over at 10:00 hours of the 16 June, it was proceeded to bring the detainee before the Prosecutor for Minors at the Audiencia Nacional. On the same day, the Central Judge for Minors ruled upon a precautionary closed-regime internment.

Consequently, from everything previously stated it may be inferred that the minor remained detained by Civil Guard officers, under the legal control of the Central Court for Minors, from 15:05 of the 14 June 2004 to 10:00 hours of the 16 June 2004. He was kept in incommunicado regime as ordered by a writ from the Central Court for Minors, that considered that measure as proportional, necessary and appropriate. An extension of the detention time for a period of 24 hours was requested from the Central Judge for Minors, and authorised by the aforementioned legal Authority. The detainee was twice examined by the legal doctor (at 21:07 of the 14 June and at 19:55 hours of the 15 June) with no incidence detected.

From all this it may be inferred that detention of minors in incommunicado regime is possible and legally foreseen in the Spanish penal legislation, while the mere regulatory legitimacy of this measure does not take away, by any means, the exceptional nature of its application, exclusively limited to those cases wherein it be fully justified and all guarantees be complied with, without hindering thus the adequate end of the police investigations, which prove especially complex and relevant whenever terrorist offences are tackled.

On the other hand, in its section 46, the CPT recommends the Spanish authorities to amend without any delay all the corresponding laws (and instructions) in order to forbid the incommunicado regime to be applied to minors.

The CPT indicates in its report that applying the Article 520 bis of the LeCrim to minors (of ages between fourteen and eighteen years) entails for them the possibility to be detained in incommunicado regime. It likewise emphasises that Instruction 12/2007, of the Secretary of State for the Security, containing a section to set in full detail the methods of application of incommunicado detention to minors, incorporates none of the special guarantees compiled, for these persons, by the Article 17 (2) of the LORPM: limiting the detention time at the lesser possible time and never above twenty-four hours; immediate reporting the Public Prosecutor's department and the parents or tutors; possibility of consulting a counsel before issuing any statement to the Police.

Indeed, the detention under incommunicado regime is, so far, perfectly legal in Spain, since it is legally foreseen in established in the Article 17 (4) of the Organic Law of Penal Responsibility for Minors and in the Articles 520 and 527 of the LeCrim, according to which the incommunicado minor detainee is entitled all the rights of any minor detainee, with the following exceptions:

- He will not be able to choose his own counsel, and therefore the counsel assisting him will be Court appointed.
- He will not be allowed to be privately interviewed by his counsel, either before or after his issuing a statement.
- He will not be allowed to inform his relatives or another person of his election the fact of his detention and the place where he stays under custody. However, it is still in force the obligation to notify those circumstances to the persons exerting the parental authority, the protection or the “de facto” custody of the minor. The authorisation for these people to assist the minor during his detention may be denied in the writ ordering the incommunicado regime, in there are enough reasons in order to do so based on the needs of the investigation of the charged offences, in which case the assistance will be lent by the staff in the Technical Team and by the Public Prosecutor's Department.

However, notwithstanding its legality, applying the incommunicado regime to a minor detainee is absolutely exceptional: the specific case referred to in the previous section had to do with the elucidating investigation and the prosecution of the authors of the greater terrorist attack undergone by Spain.

The aforementioned exceptionality has also been emphasised by **the General Office of the State Public Prosecutor, that has dictated the Circular 1/2007, of 23 November, on interpretative criteria after the 2006 reform of the penal legislation for minors, where prosecutors are required to make exceptional use of the incommunicado regime. This serves, therefore, to stress that, in practice, such a application is truly exceptional.**

In the Circular 1/2007, the following is literally established:

"The minors detained because of being charges with terrorist offences, according to the provisions of the Article 17 (4) of the Organic Law of Penal Responsibility for Minors and the Article 520 twice of the LeCrim, in case their incommunicado regime is decreed, could not hold any private interview with their Counsel, either before or after issuing their statement. Nevertheless, the Prosecutors will deny any request for the incommunicado regime of a minor –especially in the case of minors of less than sixteen years– unless it is strictly necessary for the success of the ongoing investigation. In any case, even though the incommunicado regime of the minor is decreed, the authorisation is held so that holders of parental authority, protection or the de facto wards may assist the latter during the detention. Such authorisation may be denied in the same writ decreeing the incommunicado regime, if there are good reasons for that, in function of the needs of the investigation of attributed offences, but in that case the incommunicado minor detainee will have to be assisted by the professionals in the staff of the Technical Team and in the Public Prosecutor's department ".

From this Circular, it may be inferred the consolidation carried out by the State General Prosecutor, as the top authority of the Public Prosecutor's department, regarding the exceptional nature of the detention in incommunicado conditions when applicable to minors, and the restrictive interpretation of this legally permitted measure to be carried out by the Prosecutors subject to the aforementioned Circular.

However, the CPT is hereby informed of the fact that, within the framework of the forthcoming Human Rights Scheme, the Spanish Government will issue the proposal for the legal amendment of the incommunicado detention regime, in order to exclude from the latter those under age, regardless of the seriousness of the offence that they have committed.

Section 49.

The CPT recommends for persons subject to what is established in the Article 520 bis of the LeCrim to be systematically brought before the competent judge, before adopting the decision of whether the detention time should be lengthened to more than 72 hours. The corresponding laws should be amended, in order to foresee and guarantee, by direct legal supervision, and not by the legal doctor ´s visit to the detainee, the lack of maltreatment that the latter might have undergone along the detention time, and the lengthening of the maximum detention period, in those cases the circumstances established in the Article 384 of the LeCrim could be applied.

It is true that the Article 520 bis of the LeCrim provides lengthening the period of police detention in causes for offences of terrorism to be granted "inaudita parte" (with no mediation of hearing from the contrary party) through a motivated ruling and in such way that, with this regulation, the maximum seventy-two hour general period may be lengthened forty-eight additional hours, assuming a detention assumption relating with terrorist issues, without their being viewed by the Judge before adopting this lengthening decision.

It must be firstly pointed out the legitimacy of adopting “inaudita parte” measures, whenever within limits established legally, among others, by the Court of Justice of Luxembourg (STS Factortame, of 19 June 1990, and, more specifically, Zuckerfabrik Süderdithmarschen AG vs. Hauptzollamt Itzehoe, Zuckerfabrik Soest GmbH vs. Hauptzollamt Paderborn, of 21 February of 1991) and, in Spain, by the Spanish Constitutional Court (STC of 10 February 1992), and the Supreme Court (STS, Division of the Contentious-Administrative Court, Section 4ª, of 17 December 2001, FD three, and STS Division of the Contentious-Administrative Court, of 27 February 1990). Such limits refer, essentially, to two provisos:

- The "fumus boni iuris" and the "periculum in mora", two classic figures of procedural law.
- The absence of unfairness, given the modifiable nature of the precautionary measure.

In the case of the “inaudita parte” precautionary measure, meaning the lengthening of the detention period of the incommunicado detainee suspect of being related to terrorist acts, the “fumus bonis iuris”, or the appearance and justification of subjective law makes itself defined in charging the acts to the detainee, in the legitimacy of the authority requesting the period to be lengthened, as well as in the contents of the police investigation itself.

The "periculum in mora", i.e. the legal damage deriving from procedure delays, is determined in the penal proceedings by the danger of flight or the danger of concealing the person or goods of the person accused, a danger that is the greater insofar as the seriousness of the offence (and the corresponding punishment) are increased. The aforementioned aspect obviously concurs whenever the detainee is accused of being related to terrorist acts, as in this case it is to be considered that the suspect has often got a criminal record.

Secondly, the fact that the Article 520 bis of the LeCrim acknowledges the “inaudita parte” nature of the decision to lengthen the detention period of detention does not entail there being a minimum amount of guarantees, in order to prevent the existence of unfairness.

Thus, any precautionary measure has as a jurisdictional characteristic, i.e., it must be resolved on by the competent territorial penal body, and following the procedures laid down by Law. Furthermore, the Spanish Constitutional Court has emphasised that the Spanish constitutional period determined for detention (72 hours) is a maximum and absolute nature limit for police detention, however, it is overruled by the “strictly necessary" time to proceed to the inquiries allowing to explain the facts, which justifies what is set out by the Article 520 of the LeCrim.

Likewise, if the CPT aforementioned mentioned recommendation aims at avoiding, with the detainee ´s physical attendance before the legal authority before adopting the decision of lengthening the detention period, the likeliness of maltreatment and of lack of proper defence of the detainee, it is necessary to emphasise that the Spanish legislation provides specific procedural instruments, to enable the judge to contact the person deprived of his liberty, whether or not the incommunicado regime has been decided.

Thus, the Article 520 (3) of the LeCrim establishes that "*during the detention, the Judge will be able, at any moment, to require information and to be informed of the detainee ´s situation, personally or through delegation in the investigating Judge of the judicial district or area wherein the suspect is detained"*. This legal regulation had its origin in the reform introduced in the Law of Criminal Legal Procedure by the Organic Law of 25 May 1988, owing, as well, to the relevant Decision of the Spanish Constitutional Court of 16 December 1987, by which the Upper Court declared some articles unconstitutional. With this reform, besides attuning the content of the Law to what is set out in the Article 17 of the Spanish Constitution, it was consolidated for our procedural system to keep in line with the contents of international texts on Human Rights, such as the International Civil and Political Law Agreement or the European Agreement for the Protection of Human Rights and Fundamental Freedoms.

On the other hand, the Decision of the Spanish Constitutional Court of 16 December 1987 establishes that "*Nothing prevents the Judge (...) from checking the legality and the conditions of the detention, looking after the respect for the detainee ´s constitutional rights, not only those of the Article 24, but also the other Constitutional rights involved in each case. Since its territorial jurisdiction includes the whole territory of the State, he is personally enabled to move or, otherwise, (…) to delegate in the investigating Judge of the judicial district or area wherein the suspect is detained ".*

Besides, the Spanish legislation also acknowledges the specific right of any detained person to be granted the "habeas corpus". This institution, having a wide tradition in British Law, having also its background in Spanish Law, has been historically shown as a particularly suitable system to protect personal freedom in view of any possible arbitrariness on the part of public authorities, and has been developed –as already pointed out– by the Organic Law 6/1984, of 24 May.

Precisely, its purpose is not only to establish effective and fast resources in unjustified detention occurrences, but also to set a defence procedure in the case the aforementioned detentions do not comply with fully lawful circumstances, thus allowing, by operation of law or at the request of either party involved in the full legitimating circumstances acknowledged by the Article 3, this process to be inchoated. Its first procedure, deriving from the writ of inchoation, foresees for the person deprived of his freedom to be brought before the court, in order to be heard, , or for the judge to appear wherever the detainee stays, and to the same effects.

It is consequently formulated as the appearance of the detainee before the Judge, which allows the citizen deprived of freedom to bring forth its allegations against the cause of the detention or the conditions of the latter, in order for the Judge to resolve, finally, on whether the detention is according to the law.

Therefore, the "habeas corpus" procedure is a specific legal guarantee re the precautionary measures “inaudita parte”, one of which is established in the article 520bis of the LeCrim, referred to in the CPT report. This being so because it aims at obtaining the immediate legal revision of this arrest, stating its illegality and restoring immediately the right to freedom, or declaring it as fulfilling the constitutional purposes.

Finally, it is necessary to emphasise that among the detainees accused of being related with terrorist acts is practically frequent to allege of maltreatment and lack of proper defence, infringing what is set out in the European Agreement for the Protection of Human Rights. However, it is also true that, in most cases, such allegations have been proved to lack any effect, since the corresponding reports in the file have shown a lack of sufficient evidence as to prove that infringement.

Finally, from all the facts aforementioned it may be clearly inferred for the law to guarantee the actual legal control of the arrests.

The CPT report includes, in the same section (49) a recommendation for that the General Council of the Spanish Judiciary (Consejo General del Poder Judicial, CGPJ) encourages the judges to adopt a more dynamic approach towards the supervisory authority granted them by the Article 520 bis (3) of the LeCrim.

In a preliminary character, it must be emphasised that, in Spain, the Article 12 (1) of the Organic Law of the Judiciary (Ley Orgánica del Poder Judicial, LOPJ) provides that, when performing their jurisdictional power, Judges and Magistrates are independent, as much from other legal bodies as from the Judiciary governance bodies, this safeguard including a body of external governance, such as the CGPJ. Likewise, the section 3 third of the same disposition adds that neither Judges, Courts, their governance bodies or the CGPJ may dictate any ruling, of general or particular nature, on the application or interpretation of the legislation that the judges carry out in performing their jurisdictional function.

In fact, the Spanish Constitutional Court has stated, in its STC 108/86, that "naturally, the independence of the courts must be respected, as well within the legal organisation, as by everybody".

However, it is necessary to point out that the upper body of governance of Spanish Judges, the CGPJ, is not a body that could be labeled as inactive; on the other hand, and despite the express prohibition from infringing the independence of the Judiciary, it is true that **there are many activities carried out by the CGPJ, giving proof that the Judiciary is a State Power both alive and active, permanently concerned to imbue the mind of the members of the Legal Career with the reflection of how great is the relevance of adopting legal measures resulting in the restriction of the persons´ fundamental right to freedom.**

The most serious decisions that may be adopted by any judge are always those relating to the deprivation of freedom, and therefore this has been a subject deserving, for years, a repeated commitment in the Training Schemes, as much the initial ones as the ones related with updating and specialisation, fostered by the body for the governance of the Judiciary.

As an example, there may be pointed out that initial Teaching Training Plan for Law School academic term 2007-2009, has a specific training field that studies the investigating function of Judges in penal proceedings, in the case of certain offences, as well as the case study, having therefore a 100% practical focus, of the measures of interfering fundamental rights. The aforementioned area includes, among others, the study of aspects like interfering in fundamental rights within the framework of the investigation, the detention and the special assumptions thereof, the "habeas corpus" and the consideration of resolutions about the personal freedom of the person involved. Likewise, a seminar is given about reflecting upon the social role played by the judge in society and the principles plays that frame his acts: independence and impartiality of the judge, the judges and politics, legal deontology, the judge ´s responsibility, etc.

A second aspect of the activity played by the General Council is its disciplinary action**,** exercised through its specific Commission.

Thus, despite the discretionary range that, in any case and in a regulated way, has to be granted to investigating judges concerning the choice of the investigation means that they could deem necessary in order to elucidate the facts –which demonstrates the independence and integrity principle of the exercise of their jurisdictional function– it is needless to state that, in the case of detecting deficiencies or relevant omissions in the fulfilment of their professional task, the last extremity would be to lay out the possibility –in accordance with the Book IV (Title III) of the LOPJ–, with no need of any specific reminder, to proceed into the request for responsibilities, civil, penal and disciplinary, as well.

Such responsibility is, therefore, the logical result of the constitutional status of the legal career. Any judge who infringes the duty of independence, does not abide by the rule of law, or damages third parties in the performance of his jurisdiction, will be liable to answer for it as established by the law, and to assume the penal or administrative penalty, or the obligation of compensating for any damage and prejudicial consequences.
At present, the statistical results of the activity carried out by the disciplinary Commission can be consulted in the Council Yearly Memory, published in its website www.poderjudicial.es.

Section 50.

The CPT recommends that adequate measures be taken, in the light of the previous observations, relating to the need to record in videotape record the incommunicado detainee during his whole stay.

In this section, the CPT acknowledges its being satisfied because of the use of video-recording of the detention in incommunicado conditions, as ordered by two Judges of the Audiencia Nacional in certain specific cases since 2006. Such recording is, however, deemed insufficient, as it understands that it should be compulsorily made to cover the interrogation rooms, too, thus supervising all movements, as much inside as outside the cells.

Although a reference thereof has been already made in the comment to section 27 of the Report, it must be emphasised that the adoption of such a measure is an initiative taken by a legal body. Its generalisation, through the corresponding legislative amendment referred to by the CPT, would require a previous and detailed study; so far, this has not been possible, as to ensure its effectiveness it is essential to be availed of sufficient resources, which until now was not feasible.

However, the Spanish authorities wish to inform the CPT of the fact that the Minister of the Interior has already publicly announced that the Spanish Government will tackle the regulatory and technical measures necessary to permit the recording, by videotape or on another audiovisual support, of the stay in police facilities of the detainee under incommunicado regime, a commitment that will be written down in the Human Rights National Scheme currently in a preparatory phase.

This announcement is obviously going to entail taking one more step towards strengthening the guarantees that are of assistance to the detainee. It is, moreover, quite likely that generalizing these recordings will very possibly be highly effective to put an end to forged reports of maltreatment by the officers of the Judiciary Police, the latter aspect being of essential importance insofar as most of them do not abide by the truth, but are instruments alleged by the terrorist organizations´ more radical background, the presumed members of which are detainees in incommunicado regime.

III.3 Guarantees against maltreatment (ordinary police custody)

Section 53.

The CPT points out the lack of sufficient circulation of the Instruction 12/2007 of the Secretary of State for the Security on the Behaviour Required by part of the Members of the Law enforcement Corps and Bodies, in order to Guarantee the Rights of the Persons Detained or under Police Custody.

Even though the aforementioned Instruction has been published in the corresponding bulletins of the National Police and the Civil Guard, given its high relevance and in order to ensure its full circulation, the Directorate-General of the Police and the Civil Guard has been asked to include the text of the latter into the Intranet of the National Police and the Civil Guard.

This circulation will be completed by carrying out activities of specific training, already started with an initial informative workshop on the Instruction, which took place during the last months of December and January, addressed officers of all levels within the National Police, assigned to the General Information Commissary Offices.

The training work thus begun is going to spread into other police fields through new educational activities, including on-line training, in order to generalise, as soon as possible, full knowledge of the aforementioned Instruction by all law enforcement State Corps and Bodies.

Section 54.

In the section 54 of its report, the CPT recommends that measures be taken as to ensure that all persons detained within police precincts are allowed to inform of their situation to a close relative nearby or to another third party of his own choosing, and to be afterwards informed of whether such communication was carried out.

We hereby refer to what has already been remarked regarding sections 24 to 27.

Sections 55 to 58.

The CPT recommends the corresponding legislation to be amended and the instructions applied to the authorities of the law enforcement corps and bodies, in order to explain that the right to access to an assisting counsel be applied from the beginning of the custody itself, and that it must include the right to carry out private interviews with the counsel.

We hereby refer to what has already been remarked regarding section 28.

Section 59.

The CPT recommends that measures be taken in the in the "Les Corts" district commissary precincts and, should it be deemed necessary, in other Spanish police facilities, to ensure all medical examinations to be carried out of hearing and –unless the doctor involved prescribes otherwise in an explicit way for any given case– far from sight of the Police staff.

In this sense, it should be remarked that, as a general regulation, medical examinations are carried out with no physical attendance from police officers inside the medical facilities, owing to the privacy of the act, which not only derives from the fact that the prisoner may put off his clothes, but also due to the privacy content of the doctor-patient relationship, and of the due respect of medical confidentiality. **Therefore, police officers are always left outside the consultation room, located at a safety distance allowing responding to any incident requiring immediate acting response, following the operative instructions of their immediate command officer**.

It is however true that, in those cases where the detainee to be examined is endowed with a special level of conflict, police officers always inform the health care staff, in order to make them aware of the fact, and to consider the possibility of increasing the surveillance level, by their being present during the examination. It must be remarked that, despite that, such offer is very often denied by the medical assistants and, consequently, the police staff does accept this procedure.

In a concrete example, regarding the medical assistance of the Custody Area for detainees in the precinct of "Les Corts", there are unfortunately frequent occurrences of detainees adopting violent behaviour and attempting to attack the health care staff, this situation being the **single reason owing to which the medical staff involved expressly asks, in clear and direct way, that medical examinations be carried out under police attendance and safekeeping.**

It does not prevent, however, the fact that as soon as the aforementioned health care staff in the precincts of "Les Corts" deems permanent police attendance necessary for safety reasons, the police staff will systematically cease to attend the medical examination services that would be carried out.

Section 60.

The CPT recommends an explicit requirement to be introduced in the instructions to the officers of the Law enforcing Corps and Bodies, as to the need for a person to sign a statement attesting their being informed of his rights..

Regarding this issue, it must be reminded that the already cited Article 520 (2) of the LeCrim clearly states that any detainee or person under custody ill be informed, in an immediate and understandable way, of the charges against him and of the reasons entailing his deprivation of freedom, as well as the rights entitled to him, which entails a compulsory specification of those rights.

Furthermore, the Instruction 12/2007 of the Secretary of State for the Security, establishes in its instruction 3 (1), that "once the arrest is carried out, the detainee will be immediately informed –in a language and a way he can understand– of the list of his rights, as appear in the Article 520 (2) of the LeCrim, of the charges against him and of the reasons entailing his deprivation of freedom".

To fulfill what this instruction establishes is a usual practice by all police officers, and it is duly carried out, as much in the theoretical and practical stages of work experience given to National Police officers. In fact, the "General Criteria on carrying out Procedures by the Judiciary Police, and on fast trials" approved by the National Co-ordination Commission of the Judiciary Police, in its section 8 (e) relating to the Arrest and the Information on Rights, sets out that informing of the rights entitled must be performed in an immediate and comprehensible way, stating it clearly when the person is initially arrested.

This information of the rights is repeated again when the prisoner is transferred to the police precincts, a written attestation of it being then appended through filling in the so-called "Arrest and Information of Rights Procedure", in which are listed the rights that he has been informed of, and which must be signed by the detainee, the police investigator and the judicial secretary.

Finally, the prisoner will be informed of his rights, a third time and with the attendance of his counsel, before issuing any statement.

Thus, regarding the CPT ´s recommendation, it should be remarked that **there are already due in order for officers to inform a detainee of his rights at moment of the arrest itself, to repeat that information in the police precincts, appending to the dossier the procedure form corresponding " Arrest and Information of Rights to the Detainee", signed by the latter. Furthermore, before taking his statement, the detainee will be again informed of his rights, before his assisting counsel.**

With regard to the attestation according to which the prisoner has understood the information relating to his rights, in analogy with what is set out in the Article 440 (3) of the LeCrim, **it is in practice taken care that questions and answers addressed to the detainee, as well as those issued by him, be duly and clearly documented in the detainee ´s language so that, again, the possible content ambiguity that could be related to differences between the language of the questioner and that of the questionee could be brought before the court in order to require, then the assistance of a qualified interpreter.**

Section 61.

The CPT recommends that measures be taken to ensure that the detainees are provided with a copy of the sheet with the information of the rights he is entitled and, should it be deemed necessary, in a language different from Castilian Spanish that they can understand.

The Spanish legislation, and especially the Article 520 of the LeCrim, specifies in a clear and explicit way the rights to which the detainee is entitled. The detainee, once agreeing with these rights, will append his signature to the aforementioned procedure form, should he wish to do so, always after having it read or translated by an interpreter, and being fully informed of the scope and the contents of the each of the rights entitled to him.

The aforementioned minutes are appended to the procedures to be processed by the corresponding Court, and it is very often shown to the counsel when he is attending in the activities established by the Law, so that both its provision and the understanding of what is thereby stated are thus sufficiently guaranteed, with no additional measure to be requested.

On the other hand, regarding foreign detainees, the Article 520 (e) of the Law states the right to be attended, free of charge, by an interpreter who will translate all the explanations deemed suitable by the detainee as to the rights that he is entitled to, and the doubts he might have about them, including the appropriate explanations as to how legal procedures work in Spain, regard which there are model forms of information minutes on rights in several languages, in order to obtain a better response and a higher speed in preparing the corresponding procedures.

Furthermore, the Article 22 (1) of the Organic Law 4/2000, of 11 January, on the rights and freedoms of the foreigners in Spain and on their social integration (henceforth the LOE, Ley Orgánica de Extranjería, or Law on Foreign Citizens), prescribes that "*foreigners being in Spain and in want of sufficient economic resources, according to the criteria established in the rules for free legal assistance, are entitled the to access this assistance in administrative or legal actions that might entail for them the denial of entrance to the Spanish territory, in those implying their return or expulsion from the Spanish territory and in all asylum-related procedures. Furthermore, they will have the right to be assisted by an interpreter, should they not understand or speak the official language used ".*

In this sense, the Instruction 12/2007 of the Secretary of State for the Security establishes in the instruction 4 (2) that "*police precincts will be supplied with printed forms of information on rights in the most common languages, being taken care of by an interpreter in the appropriate cases, in order to comply with what is set out in the Article 157 (3) of the Developing Regulation of the Organic Law 4/2000, of 11 January, that establishes that the foreigner deprived of freedom must be made aware of his situation and of the police proceedings to be carried out, without any language related hindrance".*

To abide by this wide legal framework ensuring, therefore, that the detainees are immediately informed of their rights in a language that they may understand, **the different police precincts have been sent sheets of information on rights to be handed out to detainees who do not understand or speak Castilian Spanish. It is therefore considered that the legal framework currently in force – not only with a general character, but also in the specific field related to foreign citizens – as well as the practices carried out by the Law enforcement Corps and Bodies, actually comply in an effective way with what the CPT recommends in this section of its report.**

Sections 62 and 63.

The CPT invites the Spanish authorities to review the automated custody register system, so that it allows effective supervision.

We hereby refer to what is remarked re section 42.

Section 64.

The CPT recommends once more the Spanish authorities to take the necessary measures in order to guarantee frequent and unexpected visits to the detention facilities of the Law enforcement Corps and Bodies, either by substantially strengthening the existing bodies capacity, or setting a new specialised and independent authority.

The first thing which we have to emphasize is that **the Spanish legislation already foresees for the legal authority to be enabled to carry out inspections of the police precincts through which the detainee has been going.** In fact, the Article 520 (3) of the LeCrim establishes that during the detention, the Judge may, at any time, require information and get to know, either personally or through delegating in the Investigating Judge of the district or the area where the detainee stays, the situation of the latter.

But, furthermore, **the Organic Law 6/1984, of 24 May, regulating the "habeas corpus" procedure** allows in the case of wrongful arrest, either by operation of Law or at the request of the parties involved in the full legitimating cases examined in the third article third party, this special process for protecting individual freedom to be started. As the first action deriving from the writ of inchoation, this foresees bringing the person deprived of freedom before the court, in order to be heard, or the attendance of the judge in the place of stay of the detainee, to the same effects.

Until now, visits to Spanish detention centres have been carried out with full normality by the inspection services of the Ministry of the Interior, by the judicial authorities and by the Ombudsman.

Thus, concerning the investigations upon the acts of armed gangs or of terrorist groups, objective competence is granted to the **Central Investigating Courts in the Audiencia Nacional,** who have, of course, made use of this function granted them. It is, therefore, a legal praxis which is not, at all, peculiar: in fact, it has been applied until now, although, let we insist on it, without the need of a legally established general obligation.

On the other hand, the **Ombudsman**, as an institution independent of the police Administration, may also appear in any police precinct in the course of the ongoing investigation, in order to compile all necessary data or to do all the personal interviews deemed suitable, all this being compliant with what is established in the Organic Law 3/1981, of 6 April, regulating its status. In this matter, the Ombudsman is extremely active in exercising his investigating function by operation of Law or at the request of any party, so as to elucidate the Civil Administration acts and resolutions, as well as those of their officers towards the citizens, in the light of what is set out in the Article 103 (1) of the Spanish Constitution, as well as the respect to the rights proclaimed in its Title one, among which appears, endowed with the category of a fundamental right, the right to freedom.

Therefore, besides the annual reports that it draws up and brings before the Parliament, it has made many monographic reports, of special precision, thoroughness and rigour, in which it reflects any deficiencies detected in the Civil Services´ different activities. One of these reports was, for example, the one on the penal situation and the city councils´ detention centres (1997) and the one relating to legal assistance for foreigners in Spain (2005).

It is, furthermore, convenient to recall, as relating to this recommendation, that Spain ratified the Optional Protocol of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishments, which came in force on the last 22 June 2006.

With the especial aim to advance qualitatively towards the lines recommended by CPT, the Spanish Government is actually approaching the ways to materialize the commitments meant by the referred Protocol start-up. As it has begun to consult the Ombudsman and the main NGOs involved in the defence of human rights, (caring to guarantee that national prevention mechanisms enjoy the necessary independence and credibility), the activities to start up such mechanisms are highly successfully advancing.

Once Spain has set such mechanisms, visits to the detention centres will increase in a significant way.

Besides, in order to prepare this forthcoming stage, the Secretary of State for the Security dictated his Instruction nº 4/2007, on the Application of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishments, in which it was established that Personnel and Safety Inspection Services of the Ministry of the Interior will carry out a sampling of the centres and detainee custody facilities of the Law enforcement State Corps and Bodies, by visiting, with no previous notice, the precincts of the National Police, as well as those of the Civil Guard.

II. 4 Detention Conditions.

Section 68.

The CPT recommends that detention conditions in the visited establishments of the National Police and the Civil Guard be reviewed, and the existing defects remedied, in view of the observations made in the previous sections 65 to 67. Especial care should be paid to cell lighting, ventilation and hygiene, and to mattresses availability by night time; measures must also be taken to ensure that the detainees have rapid access to decent sanitary facilities at any moment, night time included. Furthermore, for persons detained for longer than 24 hours, facilities to fresh air exercises should be provided.

The CPT would also like to receive a confirmation that the construction of the new detention area of the Central Section of the Information Service at nº 1 Guzmán el Bueno in Madrid will fully comply with the CPT regulations, especially those regarding access to natural light, to ventilation and to the availability of facilities for fresh air exercises..

With a preliminary nature, the CPT report emphasises, in overall terms, the nature of the National Police precincts as of the Civil Guard stations to be generally acceptable and satisfactory in nature. However, it focuses on other, highly isolated, cases, wherein detention conditions are not deemed suitable enough.

As regards the National Police area, it mentions the Comissary precincts of Arganzuela, Moratalaz and Tetuán, in Madrid, and it also refers to the precincts of Granollers and San Feliu de Llobregat, of which it remarks upon their acceptable condition, even though pointing out to the lack of natural light, and of calling rings, in most of them. This lack does not, of course, entail a proper state of the facilities, even though it cannot be stated that such lack renders unbearable the stay in such precincts. It should be, furthermore, remembered that police precinct cells are not penitentiary centres where those entering them remain for long periods of time; they are meant to be used as custody places for detainees, wherein the detainees´ stay is the minimum necessary one to transact the formalities of police attestations or procedures, in order to bring them before the legal authority. Nevertheless, the lacks aforementioned are not only replaced by other kinds of lighting and by the existence of a permanent safety service all along the daily twenty-four hours, to which recourse may be had at any moment, which contributes, by itself, to prevent the detainees from self-inflicting injuries.

The CPT refers, later on, to the local Commissary Precincts in the South of Tenerife (the old Playa de las Américas, in which it remarked, however, that three prefabricated one storey lodging compounds, of 100 square metres each, were being constructed, to face in a suitable way the frequent arrival of great amounts of irregular emigrants) and the provincial Commissary Precincts in Santa Cruz de Tenerife. In both cases, there were complaints about the lack of natural light and the scarce ventilation, a situation repeating itself in the main District Commissary Precincts in Barcelona.

In this respect, it should be remarked, with a preliminary character, that **there is a three level control of the detainees´ cells conditions:** On the one hand, the daily log-sheets made by the officers in charge of their safety, in which they determine the deficiencies that might have appeared; on the other hand, the controls made by the Directorship of the National Police Corps through the corresponding inspections, and, finally, the suggestions, recommendations or reports that different police trade unions make via the Occupational Health meetings and, more recently, through the Commission for Preventing Labour Risks, having national scope, and through the different Prevention Committees existing in each of the Police Upper Headquarters, all of which comply with is established by a specific regulation, the Royal Decree on the Application of the Prevention of Labour Risks within the National Police Corps (Royal Decree 2/2006, of 6 January).

Once this general remark has been pointed out, it has to be emphasised, again, that detainees´ cells in the commissary precincts do not have the condition of penal centres but that of places aimed at detainees´ custody, in which the stay lasts the minimum time. This distinction does not, of course, imply for the cells in Police commissary precincts to be "free" of any regulation, neither does it, indeed, justify the deficient conditions of many of them; but can help to explaining that the aforementioned state can be caused, first of all, by the frequency with which people pass through them they pass, and the use they undergo. Furthermore, **the fact that they are places intended for a minimum stay of the detainee a stay having a maximum period, as already mentioned, regulated by law, is the reason for which it is not possible to apply to these facilities some of services and provisions currently available for penitentiary centres,** as is the case in places for exercise practice in fresh air, for leisure and recreation, for carrying out working activities… etc.

Despite what is mentioned above, it is obvious that detention facilities are capable, of course, of being improved. And some of them may, in an exceptional way, not meet the characteristics required by the CPT. However, it is needless to say that precinct modernization is a matter of full complexity which requires, first of all, sufficient availability of funds, something that will be a function of the budgetary availability, worked out according to the priority assignations set in the annual expenditure forecast and to the possible special investments generated. But it is furthermore necessary to take into account the difficulty of the aforementioned forecast, not only from an economic standpoint but also from a functional one. It is not easy to foresee the number of detainees per day, or measure their yearly amount, nor does such calculation entail for the estimated amount to be met.

In spite of the aforementioned difficulty, it is obvious that an important effort in improving, adapting and renewal this kind of facilities is being carried out, wherein lighting, ventilation, sizes, surveillance through technical resources, etc, are taken into account in the new buildings, being the authorities´ aim that of progressively adapting the physical conditions of the old precincts. **In fact, those precincts that do not meet minimum conditions are not used as places for detainees´ custody, and are kept closed until enabled for their use**, as has happened in the Commissary precincts in Vallecas, dealt with in the following section of this report.

In the framework of that general reconditioning policy of the cell facilities depending of the Directorate-General of the National Police and the Civil Guard, it is necessary to emphasize that, while the corresponding reforms are carried out, submitted to the clauses of an administrative dossier and, therefore, to time-length proceedings which imply a remarkable investment and the need to carry out the aforementioned reconditioning assigning priorities in function of the most urgent needs, **it is tried "to lessen" those deficiencies with the resources, as much in means as in staff, which are available**.

Thus, the lack of calling rings in the cells of the District Commisary precincts of Arganzuela, Moratalaz and Tetuán, which depend of the Madrid Chief Police Headquarters, and in the Commissary precincts in Granollers, which depend of the Catalunya Chief Police Headquarters is trying to be replaced, as it has already been said, by guaranteeing a permanent twenty-four hour daily safety service, in charge of answering to the detainees´ calls, uttered aloud, since the aforementioned service is located scarcely three metres away.

Re the lighting and ventilation deficiencies detected in the cell areas of the Local Commissary Precincts in Southern Tenerife (the old Playa de las Américas) and of the Provincial one in Santa Cruz de Tenerife, the adoption of the measures recommended by the CPT is highly dependent on building infrastructure. Indeed, owing to them, the cells are located at the basement, which is the motive for which accessing to natural light is not feasible, even though they have general lighting in the corridor, and individual lighting outside each of the cells.

The only feasible improvement is to increase cell-area lighting through spotlights from the corridor, and to strengthen air installation by increasing their hourly renewal, in order to which suitable instructions have been distributed so that both aspects –lighting as well as ventilation– be enhanced.

The cell area is supplied with an extractor/ventilator device, whose improvement, so as to allow the simultaneous carrying out of both tasks, is currently undergoing formalities proceedings and, therefore, pending its implementation.

Cell cleaning tasks are carried out on a daily basis, and the fumigation ones with monthly regularity, without prejudice of their being carried out, on a case basis and always whenever necessary.

Regarding mattresses, the detainees are provided with them during their stay in the precincts. As regards the recommendation for detainees "to have prompt access to health care facilities", they are, likewise, given health care assistance in medical centres, at any hour by day or by nighttime. It is true that this Commissary precinct, as well as the Local Southern Tenerife one, are located by two health care centres less than a kilometer away, and by a third one some four kilometers away, which implies that urgent sanitary assistance cases are immediately solved.

Finally, the possibility of having fresh air facilities so that detainees may take their exercise has not been foreseen, neither is it deemed to bring any substantial improvement to detention conditions, as practically shown by the very scarcity of cases whenever detention lasts longer than the 72 hours legally established as maximum detention time.

Without prejudice of what was previously remarked, and in order to bring remedy to the situation of the cell areas, the corresponding formalities have already been undertaken to solve lighting problems in cell area, as well as to repair air extraction and ventilation.

On the last 22 February 2008, at the Local Commissary Precinct of Southern Tenerife, the old Commissary Precinct of Playa de las Américas, there came into operation the new facilities of the foreigners´ temporary internment centre, adjoining the building of the aforementioned Commissary precinct, in order to face the more massive immigrant arrivals, as those registered last year coinciding with the dates of the CPT visit to the facilities.

The new compound includes two prefabricated blocks; one of them, two storeys high, exclusively assigned to dormitory area, which is, as well, subdivided in five independent units for 96, 90, 76, 50 and 24 places, amounting to a total of 336 places. Each unit is provided with independent toilet-rooms.

The second block, one storey high, has two dining rooms, a wide leisure room, sanitary facilities, security and custody offices, shower-rooms and machinery service area. All facilities are provided with air conditioning and natural hot water.

Regarding the deficiencies pointed out by the CPT in the section 66 of its report, relating to the District Commisary precincts in Puente de Vallecas, the conditions of which were marked as "unacceptable", and led unto the request, uttered by the Delegation, for it to be closed, it is necessary to indicate in an interim way, and the CPT notes so, too, that, after twice visiting the mentioned precincts on the 24 and the 30 September, and the 1 October 2007, a visit in charge of the Staff Inspection and the Security Services dependent on the Secretary of State for the Security, the cell areas were closed on the 17 October 2007, due to the deficiencies observed.

Before the closing, as a consequence of the visits carried out by the Inspection Service, the detainees were transferred to the Central Register for Detainees, located at the Moratalaz Police Compound.

The area intended for cell areas in the Commissary precincts in Puente de Vallecas is located at the building half-basement, has four individual cell areas and a collective one, a detainees´ toilet-room and a staying-room for officers. Owing to their obsolency, the facilities were damaged, which raised the need to recondition and renew the facilities, obviously within the architectural framework in which they are found.

The conditioning works consisted in providing new pavements and new and more hygienic tile coatings, with metalwork and bars complying with the last rules. It has also been installed a new lighting and ventilation system, and new toilet-rooms and water-collectors in the common areas, to facilitate its cleanliness. The effects of those reforms can better be noted on the photographs adjoined to this report (Annex 4) Furthermore, and answering in an express way to what the report points out, the Supply Service of the Economic and Technical Co-ordination Division does supply cell areas with mattresses, as previously requested by the facility.

Finally, it is necessary to emphasise that, **currently and after the implementation of the works and in view of their results, the precincts have returned to assume working conditions from the last 12 March 2008,** which shows the speed in adopting the corresponding measures (Inspection and actual conditioning work) as that of the recent service reassumption.

Consequently, from all the aforementioned data, it has to be inferred the conclusion that, generally, the conditions of those cell areas situated in the Comissary precincts of the National Police are acceptable, without the prejudice that some of the reported by the CPT are already undertaking measures (instructions drawing up, budgetary requests for new work… etc) having as an aim to lessen the possible harmful effects generated for the prisoner by the defects detected by the CPT.

Regarding the precincts –or posts– of the Civil Guard mentioned in the report, the initial premise is again that material conditions are satisfactory as much in the post of the district of Vizcaya as well as in that of Baracaldo and that of Alava in Vitoria, even though, once again, the lack of natural light is reported as is, in some cases, the limited cell-space. The same is reported regarding the cells in the Central Section of the Information Service of nº 1 Guzmán el Bueno, in Madrid.

First of all, to respond to the CPT approach in this matter, it should be pointed out that the Technical Unit of the Judiciary Police drew out, at the time, a series of regulations and recommendations relating to building cells of the new precincts and posts and/or the reconditioning of the already existing ones. These regulations were approved and published by the Operative Deputy Directorate of the Civil Guard, with the adjustments proper to the singularities of each building, and following the CPT recommendations on the matter. It is not to be forgotten that the cells are designed for a very limited temporary stay, due to which the possible lacks or inconveniences are, too, quite limited.

Regarding the precincts of Inchaurrondo, it is to be informed that the cell area relocation is foreseen for the third stage of the precinct compound, currently under construction.

Regarding the Guzmán el Bueno Central Information Service, a building referred to by the CPT report, and located at the number 112 of the mentioned Madrid street, it is currently dislodged and pending on carrying out improvement works, which will have to comply with the CPT recommendations. For this reason, the Spanish authorities wish to announce that, as soon as the mentioned reforms are carried out, it will be proceeded to recondition these precincts –detention centres included–, in accordance with the aforementioned regulations which, anyway, will have to comply with the indicated recommendations.

Section 69

The CPT recommends the Spanish authorities to take the necessary measures to improve significantly the detention conditions, including the disposal of a fresh air exercise area, or to ensure that nobody is detained for longer than 24 hours in the foreigner detention area at the international airport of Barajas.

It should be remarked, on this matter, that the non-admitted persons ward at the airport of Barajas is aimed at lodging the persons rejected or non-admitted at the border, during the delay time until the return flight to the country of origin takes off; such time not exceeding 24 hours on the great majority of opportunities. This time is only exceptionally exceeded when the corresponding airline does not operate within that range of flight frequencies, and sometimes since the passenger refuses to return, making it necessary to wait for the next flight. Nevertheless, it is to be emphasised that, in order for them to remain within the ward for the essential time, the non-admitted person is offered the possibility of acquiring a return ticket in another company.

Therefore, the facilities in the non-admitted persons ward are adjusted to the purpose of that ward, set for a strictly temporary permanence and during a mostly short time.

On the other hand, it should be recalled that the Organic Law of Foreigners establishes, in its Article 60, that whenever the return of those foreigners not allowed to enter the country at the border-point is to be delayed more than seventy-hours, the governmental authority deciding on the return should contact the Investigating Judge as soon as possible, for the latter to determine the place where they will be interned until the moment of their return. This longer term cannot, in any case, exceed forty days.

Regarding the material scarcity of material in the three large one-room units complained of in the CPT report, pointing out the want of proper equipment (chairs, beds and mattresses on the floor) it should be emphasised that **new material has replaced the formerly existing one, the new items being provided in the amount corresponding to the size of the room and to operative needs. This was done by Spanish Airports and Air Navigation** (AENA), a Public Business Organisation in charge of the management and maintenance of the civil airports of general interest, and of the facilities and air navigation assistance networks.

Finally, the CPT alludes to the lack of space for outside exercise taking or for open air activities; in this matter, the police officers in charge of airport security have noticed the risk of flight of some of the passengers who entered the airport facilities, and who were allowed the use of an existing space when entering the territory, since it meant a danger for the physical integrity of those persons non admitted aiming to drop or jump from considerable heights, which entailed that space not to be used anymore. However, this same place**, has been enabled as a room or an area to be used by minors,** equipped with the means of a child playing room or a day nursery, where children might be accompanied by their parents or their relatives, with a timetable established for their use.

Likewise, non admitted passengers who need to smoke or make some consultation are allowed to be outside the room, for the time they are engaged in doing so.

Sections 71 and 72.

The sections 70 and 71 of the CPT report allude to the detention conditions in the district Commissary precincts of "Les Corts" in Barcelona, and of Girona, Granollers and Hospitalet, where it remarked upon the lack of access to natural lighting and ventilation, as well as upon the lack of calling rings and that of facilities for open air exercise.

It should be stated, in this matter, that in the months after the CPT delegation visit, new improvement conditions have been fostered in the detainee custody area in “Les Corts".

- In October 2007, it was started to apply a new cleaning protocol in cell areas, systematically allowing that, whenever a cell is vacated, and before it lodges a new prisoner, it is fully cleaned and disinfected.

- During January 2008, improvements in the ventilation system in the cell area were established. Ventilation ducts were equipped with plates, with special products so as to combat bad smells.

For the rest of year, it is likewise foreseen to carry out new improvements, consistent in**:**

- Cleaning up the cell closets, and installing collector drums in the service yard.

- Ensuring the custody zone ventilation, by installing a new ventilation duct from storey (-1), wherein the custody area is located, and reaching the building roof.

Thus, in view of the improvements carried out, the CPT recommendation is assumed to be taken care of.

Section 73.

In this section, the CPT stresses the need to improve the Ertzaintza police detention facilities, visited in the Basque Country – especially the cells of the Police Comissary precincts in Bilbao and Vitoria, and those of the Information and Analysis Service at the district of Oiartzun, in Gipuzkoa – so that they might have natural lighting and the detainees might take exercise outside the cells.

The will to improve the detention conditions in the facilities of the Law enforcement Corps and Bodies, acknowledge by the CPT itself in its report, is also shown in the Basque Country, where important efforts have been carried out in order to improve cell area installations, enhanced whenever feasible to make them compliant with an access to natural lighting.

On the other hand, as to the "non-existence of facilities for open air exercise", regarding the cell areas in the Ertzaintza commisary precincts, such remark is mentioned in this section owing to unknown reasons since, as already mentioned in the previous sections, it does not have any affect on prisoners, but on the detainees in police precincts that do not have, in any case, available facilities to take open air exercises, this being especially due to the provisional character of this precautionary measure, established by the legal and constitutional maximum 72 hour deadline limit for police custody, at the end of which the detainee must be either set free or brought before the courts. This provisional nature is defined in an even more explicit way by the Spanish Constitution, which states that the detention *"cannot last longer than the strictly necessary time needed in order to elucidate the facts"*.

To give, with greater clarity, due definition to this indeterminate concept of "strictly necessary time" recourse may be had to the international texts ratified by Spain, as the European Agreement for the Protection of Human Rights and of the Person ´s Fundamental Freedom, in which the Article 5 (3) does not define an upper deadline but, on the other hand, does require the detainee to be brought "without delay" before a judge.

Therefore, the want of provision of this type of facilities is closely bound to the essence of the precautionary measure itself and, in a more specific way, to its provisional nature, without it being considered needed to adopt any measure to comply by the CPT recommendation.

Section 74.

The CPT requests that Spanish authorities establish regulations for the detention facilities dependent on the Law enforcement Corps and Bodies, taking into account the Committee criteria; the fulfilment of those regulations and the instructions relating to detention conditions must be effectively supervised.

Concerning this matter, and in accordance with the recommendation issued by the CPT, the Secretary of State for the Security has entrusted his Directorate-General for Infrastructures and Security Material to prepare a paper on "General Technical Criteria on Detention Areas", where homogeneous regulations for the construction of this kind of areas are established.

The Law enforcement State Corps and Bodies have been requested to issue their remarks and suggestions regarding such document, in order to duly improve it. Once this stage is through, the paper will be submitted to proceed to its final approval.

III.4 Prison centres.

III.4.1 General remarks.

Section 78.

The CPT recommends the Spanish authorities to continue to energetically undertake flexible policies aimed at putting an end to prison overcrowding, taking into account, among other things, the principles established in the recommendations R (99) 22 and R (2003) 22 as well as other pertinent recommendations of the Committee of Ministers of the Council of Europe. In that sense, it requests detailed information concerning the measures adopted by Spain to put an end to prison overcrowding.

In order to analyse the aspects referred by the CPT, it is worth to start from **the present situation of the Spanish penitentiary system.** When elaborating this report, there are approximately 70.000 inmates in Spain (another 40.000 are serving alternative sentences).

Among these 70.000 inmates, 60.500 find themselves under the responsibility of the Central Administration. 54.200 of them serve sentence in closed regime and 6.300 in open or conditional release system (probation), being classified as “third level treatment inmates” (less dangerous offenders). As a result, the inmates classified as “first level treatment inmates” (most dangerous offenders – closed system) represent 2,1% of prison population, while inmates classified as “second level treatment inmates” – intermediate classification, or ordinary regime) represent 80,6% of prison population.

Foreign inmates reach 34,65% of prison population, with a significant increase during the last years.

Finally, concerning infrastructures, the Spanish prison system run by the Central Administration is provided of 66 prison centres, 14 social integration centres, 10 open system centres and 46 custody hospital wards.

Once examined the real situation of the penitentiary system in terms of figures, it is worth to state that the public policies adopted to reduce prison overcrowding already meet the recommendations made by the Council of Europe in R (99) and R (2003). These recommendations included:

- To consider the deprivation of liberty as a sanction to be used as last resource.
- To compensate for the negatives effects of overcrowding with a greater amount of outer contacts of the inmates.
- To extend the use of probation system, open system and penal leaves.
- To reduce the use of provisional custody and its duration to the minimum compatible with the interests of Justice.

- To extend the use of alternatives to provisional custody.
- To reduce the use of long duration sentences and to replace short duration sentences with community services or community sentences.
- To implement an appropriate set of community services or community sentences, possibly graduated according to its severity, and to promote the use of the conditional release system.
- To implement effective treatment programmes to facilitate the social reintegration of offenders and reduce reoffending.

The central element of the Spanish penitentiary politics is the treatment to be given to the prison population, aimed at facilitating the full social reintegration of offenders once the have served their sentence and at providing them with the suitable environment to carry out a peaceful life and to respect the prison rules and the rights of the others. Taking into account this fundamental premise, a big, twofold effort has been made: first of all, efforts have focused on the development of alternative forms to serve sentence, through the extension of the open system, penal licences and contacts with the outer society and the improvement of treatment programmes aimed at facilitating the social integration of offenders. On the other hand, special attention has been given to the construction of new penitentiary centres to "alleviate" the problem of the recent increase of prison population.

The above mentioned measures are aimed at tackling the problem of prison overcrowding through a more rational use of prison sentences. Mrs. Mercedes Gallizo Llamas[6], Secretery General of Penitentiary Centres said: "prison centres are not, and cannot be a parking lot for people, nor a dump for human wastes, but a tool for the State to deal with the problems which led offenders to commit a crime and to help them face their problem and, if it is possible, find a solution. In this perspective, the system needs to get a sustainable dimension.

In this sense and above all, sanctions need to be respectful of human dignity and need to be understood as a goal, not as a mean to facilitate, through the application of different public policies, the reintegration of offenders, to which aim it is necessary to implement set of different measures.

The first set of measures adopted by the Spanish Government and that are to be implemented during the next years, includes:

1. The **strengthening of the open system**, which allows a better reintegration of the inmates, provided that it put the offender in a context which is more similar to life in community. As a result, the number of inmates classified as "third level inmates" has increased from 10,9 % of the prison population in 2004 to 18,3% in 2008 (see table in Annex nº 5).

2. **The number of inmates classified as inmates of first level treatment is currently and significantly falling down**, and it has reduced by 44% during the last five years.

3. In addition, during the last four years **the resolutions concerning the classification as third level treatment inmates have shown an increase of 60,6%** (see table in Annex nº 6).

[6] "Penitentiary Law: Influence of the new amendments". Cuadernos de Derecho Judicial XXII-2006. Pag. 19.

In this perspective it is also worth to underline the remarkable increase in the use of telematic devices as a way to serve sentences within the open system, according to article 86.4 of the Penitentiary Regulation approved by the Royal Decree nr. 190 of the 9th September 1996. This regulation allows the implementation of freedom restrictive mechanism without any need for the use of detention. While in 2004 in Spain there were 387 inmates under electronic surveillance, in December 2007 their number had raised to 1.676 (an increase by 333%) and during this period 4.236 electronic devices were installed (see table in Annex 7).

4. Furthermore, **the implementation of article nr 100.2 has increased by 14,385%, which is a regulation allowing a flexible classification of inmates, combining elements of different treatment levels and a better social reintegration of the offenders**. More precisely, between 2004 and 2007 the number of inmates classified within ordinary régime (as second level treatment inmates) but combined with element of the open system has raised from 4 to 678 (for more detailed information see table enclosed to Annex 8).

5. **The drug addict inmates treatment has been improved within external detoxication wards**, in accordance with article 182 of the Penitentiary Regulation. As a result, between 2003 and 2007 the implementation of this measure has raised by 85% (see table in Annex 9).

6. As sixth measure, **penal licenses and scheduled leaves have been intensified as well, with a view at promoting a greater contact of the inmates with the outer community** and alleviate the negative effects due to detention. Between 2003 and 2007 scheduled penal leaves have shown an increase by 125% (see table in Annex 10).

7. In addition, **the implementation of specific inmates treatment programmes has been improved** (see table in Annex 11), particularly in the field of gender and sexual violence. Since 2005 7 new programmes have been established, involving approximately 11.000 inmates. The gender violence and sexual violence programmes have been introduced in 38 and 46 prison centres, respectively, involving approximately 835 inmates.

8. Finally**, the number of penal leaves has also increased** and the failure rate remained low: 0,58% (for more details see Annex 12).

As regards **alternative sanctions**, it is necessary to assume that, if compared with other legal systems, until recent time our penal system has been characterized by a poor regulation of alternative sanctions to detention. That is why the regulation of these measures was one of the major novelty of the Spanish Criminal Law of 1995 and following reforms and its scope has progressively increased. As a first explanation, it must be said that in Spain this increase is not due to massive detention; on the contrary, the proportion of provisional detentions has hardly raised and has been for years in the region of 25% of prison population. But there are other factors which have facilitated the increase of prison population referred in the CPT report, such as the repeal of the redemption system in 1995 and the adoption of new legislation related to other forms of crime, such as gender violence and road safety, provided that nowadays society cannot let new forms of crime go unpunished. This is why new crime typologies arise, such as gender violence, paedophilia, corruption as well as reckless driving and driving under the effects of alcohol.

Within the scope of the Central Administration, 44,2% of the Spanish prison population is serving sentence through alternative sanctions, while 56,8% is serving prison sentences.

The evolution of the population serving sentence through alternative sanctions is clearly shown in Annex 13.

The number of mechanisms to serve sentence through community service has also increased, in accordance with one of the Recommendations made by the Council of Europe, the consideration of the use of prison sentences as last and not the first resort to punish misconduct. In this way, in 2004 1.739 sentences were served, while in 2007 the number of sentences served has increased to 9.929. On the other hand, we also have to add that new collaboration agreements were signed with different bodies and entities (25 to be more precise), both private and public and two other agreements are being negotiated. As a result, the number of places for community service has increased from 3.260 in 2004 to 5.753 in 2007, that is by 60% (for more detailed information check table in Annex 14).

These kind of measures need to be added to other efforts of the Spanish Administration as regards the building of new penitentiary centres. The CPT itself recognizes **the extraordinary effort made by the Spanish Government in this field to renew and extend the capacity of its prison centres**. In fact, in December 2005 the Council of Ministers decided to extend and revise the **Penitentiary Centres Amortisation and Creation Plan with horizon 2012**, which will enable the building of 12.000 functional cells and another 2.400 complementary cells, meaning a total investment of 1.647.209.000 euros.

Since the approval of the agreement, there have been started 1 new Penitentiary Model Centre (Puerto III), 10 Social Integration Centres (CIS) for open régime sentence serving and 4 Hospital Custody Units (UCH). Likewise, there are finished and ready to begin their operation 3 more Penitentiary Centres (Madrid VII, Castellón II and Sevilla VII), the enlargement of the Penitentiary Centre in Lanzarote, 2 CIS (Sevilla and Mallorca), as well as the Unit for Convict Mothers in Mallorca, the aim of which is to prevent children growing up in prison background, and thus fostering family rooting.

Finally, there are being in building stage 11 CIS and 2 Units for Convict Mothers. It is foreseen and in management so far as 2012 the building of 11 Penitentiary Centres, 16 CIS and 2 Units for Convict Mothers.

Even though the construction of new penitentiary centres cannot be seen as the only solution to the problem of prison overcrowding in Spain (which during the first 8 months of this year has increased by 4.740 inmates), we cannot disregard the fact that this upward trend (note that since 2000 the number of inmates has raised from 39.013 to 62.239) may require the extension of the above mentioned Penitentiary Centres Creation Plan 2005-2012.

However, it has to be underlined that the building of prison centres is being carried out in accordance with modern standards in relation to suitable services and infrastructure ant that this has been achieved without prejudice to the implementation of new technologies to security systems. Special attention has been given to the construction of "friendly" centres, given that the need for security which has to be present in every prison centres should not prevent from building less uncomfortable buildings, using for instance solar panels, gardens or walls with colored bricks.

Summing up, the Spanish Government is making an extraordinary effort in order to renew and enlarge its penitentiary centres and to manage and adapt the available resources, with a view at finding, in accordance with the CPT recommendations, solutions to the weaknesses detected in our prisons.

Even though the complexity of the project – meant to last until 2012 – and the dimension of the infrastructure to be built does not allow a complete assessment of the results, until proper end attained, the Spanish Government is sure that it will allow a high enhancement of life conditions within our prisons.

It must be emphasised, as related to this project, that we are building 5 new Units for Convict Mothers aimed at sentence serving for those mothers who cohabit with their minor children, all this with the purpose of preventing children to grow up in prison background, and thus fostering family rooting.

Likewise, in order to enhance our penitentiary system, priority is being given to open systems implementations and also to the intervention programmes with excarcelated persons and parolees in order to further their social integration and adaptation.

Finally, law amendments will be furthered in order to tackle the ordinance for penitentiary and civil servants corps so as to adapt them to their everchanging tasks, to update their function and competence definition, and to review their need for initial training and for continuous feed-back and training.

Section 79

The CPT invites the Spanish authorities to double the efforts to reduce prison overcrowding and to improve the internment conditions of the Modelo centre, even considering the possibility to adopt the measure contained in art. 10.2 of the Convention creating this international organization, which foresees the publication of a report denouncing the lack of cooperation of a Member State, without requiring the authorization of the country under investigation, should the Spanish Government decide not to adopt the measure needed to implement its recommendations.

On this regard it must be stated that since 2002 the prison population has kept growing, to the point that, while in 2002 the total number of inmates in Spain was 6.924, at the time of drawing up this report it rises to 9.743. Given this situation, in 2004 the Catalan Administration drew up a Plan to renew and enlarge its prison centres, which was extended and revised this year. This Plan foresees the creation by 2013 of 7 new centres, 4.700 new places and the closure of 6 obsolete centres, including the Male Inmates Penitentiary Centres of Barcelona (Modelo).

On the other hand, the designed planning or measures for the coming years are also meant to tackle prison overcrowding, that is a common problem for many penitentiary centres, and in particular for the Modelo centre, as highlighted in the CPT report. In June 2007 the new Brians Centres 2 was opened, with a capacity for 1.500 inmates which helped to relieve overcrowding in other centres. In October 2008 a new prison centre for younger people (aged between 18 and 23) will be opened, with a capacity for 350 inmates. In November 2008 the new Lledoners Penitentiary Centre, in San Joan de Vilatorrada (Manresa) will also be opened, with a capacity for 750 adulte inmates.

Therefore, the adoption of these measures will result in the provision of more than 1.000 places, which will ease the reduction process in centres such as the one for male inmates in Barcelona (la Modelo). As a clear proof of what has been reported up to now, we can state that while in May 2007 the number of inmates in the Barcelona centres reached 2.119, this figure has now reduced to 1.856 and in all probability it will continue to fall between October and November thanks to the opening of the 2 new centres.

III.4.2 Re. the penitentiary centres accountable to the Department of Justice of the Regional Government of Catalunya.

III.4.2.i Torture and other forms of ill-treatment.

Section 83.

The CPT recommends to the Catalunyan authorities to regularly remind to the staff of the Brians 1 centres that no form of ill-treatment, including verbal attacks, is acceptable and that it is a sanctionable offence.

It also recommends to the prison officers of the Brian 1 centres, as well as to those of other centres to become fully aware that the use of force to control violent and/or reluctant inmates should not exceed the level strictly necessary and that, once the inmate has been put under control, beating will be not justified.

In the above mentioned sections 81 and 82, the CPT report refers to alleged ill-treatment caused by prison officers to different inmates of the Brians 1 prison centre. In particular, the report informs that these inmates would have claimed that they had been punched and hit on the head and tied up at their bed during more than 15 hours in the so-called "*Superman*" position and obliged to relieve themselves in their clothes.

To answer the facts denounced in the report, it is worth to underline that during 2007 the Penitentiary Centre, Reintegration and Youth Justice Inspection of the Justice Department of Catalunya has investigated each and every of the accusations made by inmates of the above mentioned prison centre, adding up to 47 informative files and representing (how oddly!) some more than the accusation investigated during the past 15 years since the opening of the centre. **All the accusations concluded with a decision to shelve the complaint due to lack of decisive or indicative evidence showing the damages to the rights alleged by the inmates.**

In particular, in relation to the Brians 1 Penitentiary Centre, it is worth to highlight that no single inmate subject to mechanical binding was prevented from relieving himself in the lavatory placed in the same cell, always under appropriate security control.

On the other hand, the so-called Superman position (diagonal arms binding) has very rarely been used under controlled supervision and only in cases of high aggressivity and physical tossing. Furthermore, this position was only kept until the inmate had calmed down, the position was changed and the arms of the inmate were crossed. And it must be said that the Superman position was never used in the cases mentioned in CPT report.

In any cases, two premises need to be stated:

- First of all, the duration of this measure depends on the aggressivity shown by the inmate and no systematic mechanism exists in the application of such measure nor in its duration.

- Secondly, mechanical binding is never meant as hidden sanction or punishment. On the contrary, its only aim is to preserve the physical integrity of the inmate or of third persons. The methodology of this measure allows adjustments in its application, depending on the level of violence shown by the inmate.

In this perspective, the Penitentiary Centre, Reintegration and Youth Justice Inspection of Catalunya has passed the **circular nº 2/2007 which establishes the mechanical binding procedure and formally bans the so-called Superman position (diagonal arms binding), and therefore this measure is no longer used.**

Among other things, the circular, starting from the present legal framework, including article 45 of the General Penitentiary Law 1/1979 of the 26th of September (General Penitentiary Law) and articles 71 and 72 of its developing regulation (Penitentiary Regulation), adopted by Royal Decree 190/1996 of the 9th of February, establishes a set of principles which necessarily has to rule the use of mechanical binding, and these principles include the respect for human dignity and the fundamental rights as well as the prohibition of torture and other inhuman or degrading treatment.

The circular also lays down a set of unavoidable restrictions in the application of such measures: they will limit their duration to what is strictly necessary, they have to be respectful with the proportionality rule, their implementation requires the prior approval of the Chief of the prison centre and finally, their adoption has to be immediately reported to the judge responsible for the execution of sentences.

As regards the prohibition of the so-called Superman position mentioned in the CPT report, it is worth to underline that such a prohibition can easily be inferred from the third instruction which describes the binding position and states that the binding procedure must always preserve the inmate's integrity and prohibits expressly the use of degrading positions.

The circular (whose copy is enclosed as Annex 17 to this report) also establishes that the mechanical binding procedure must be continuously monitored both by the Head of prison service and a doctor. The former has to eyewitnessly monitor the binding every 30 minutes, reporting the inmate's evolution and the latter, on the other hand, has to carry out a first supervision two hours later, at the latest, and then every four hours and the results need to be included in a written report presenting the reasons why the measure has to be maintained or not.

The instruction nº 7 of the Circular lays down that it is obligatory to install video surveillance and image-recording systems in those cells which have been declared suitable to carry out mechanical binding, with a view at monitoring the inmate's as well as the staff's behaviour responsible for monitoring and the fulfilling of their obligations. Therefore, the circular represents a guarantee which meets the recommendation made in this field by the CPT.

Concerning the second recommendation made by the CPT in this section, we believe that it is an act which offends the principle of presumption of innocence to send restraining messages to prison officers. Torture and ill-treatment are probably the most serious offences that a prison officer can commit; this is why our legal system foresees that final penal sanctions due to the commission of the above mentioned crimes will automatically imply the loss of the status of prison officer and, therefore, the disqualification to work in Public Administrations, Public bodies, entities or agencies governed by public law.

The principle of "zero tolerance" against this kind of misconduct represents one of the basic pillars of a correctly implemented penitentiary policy, given that in the field of human rights no indulgence can be admitted. And this principle of "zero tolerance" is one of the subjects currently dealt with by Spanish authorities.

To that effect, the Justice Department of Catalunya has been working since 2006 with an aim at elaborating a Prison Officer Ethical Code which will include all the deontological rules that all prison officers have to respect. It is also important to take into account that the civil service legal system in Spain is governed by the statute principle, according to which all instructions given to the officers of a same group must be sent to the group as a whole, provided that all attempt of individualization for one or many officers of the collective body is strictly forbidden and this without prejudice to the individual use of the disciplinary power in case of non-observance.

In this regard, this generalized, but obligatory Code represents an answer to the recommendation made by the CPT.

Section 84.

The CPT recommends the adoption of all necessary measures to ensure that medical examinations are carried out in accordance with the focus summed up in this section.

Concerning the medical examination of inmates, it must be said, in contrast to what the report states, that **in all cases requiring the use of those coercive measures foreseen in the penitentiary legislation, inmates are immediately examined by the doctors of the centre, who report the injuries suffered, including all appropriate declaration of the inmate and the doctor's conclusions;** the inmate has free access to the data contained in this report as well as the right to obtain a copy of it, directly or through a legal representative, if he chooses this channel to get the documents. Finally, in case of existence of real and rational evidence of a possible disproportionate use of force, the Public Service Legislation ensures a procedure which bounds the administrative Authority to give evidence of the investigations carried out before the competent public Prosecutor.

Given the importance of the medical examination of the inmates in our Administration, it is worth to enter into **the details of the intervention of the medical experts.**

The effective medical examination of the inmates submitted to any kind of coercive measure has been dealt with for years in many circulars and instructions of the Penitentiary Services, Reintegration and Youth Justice Secretary of the Department of Justice of Catalunya:

1. Circular 6/2004 concerning the action and ex post procedure following the use of any coercive measure. This circular establishes that inmates will be urgently examined by a doctor and that a report will be elaborated. It also foresees the use of a periodic medical examination protocol to check the inmate's evolution (Annex 18).

2. Circular 2/2007 (already mentioned) ruling the mechanical binding procedure: it ensures that, in case of use of any binding measure, a doctor will immediately examine and monitor the health conditions of the inmate and that he/she will periodically examine the inmate, should the measure have a longer duration.
3. Circular 3/2004 on action procedures to be followed in case of violence occurred to patients in psychiatric wards. The procedure foresees that patients will have to be submitted to medical monitoring and examination and that the doctors will play a fundamental role in establishing the kind of coercive measures to be implemented, as well as their duration and control, taking into account the special characteristics of these inmates suffering psychiatric problems (Annex 15).
4. Instruction 2/1994 on inmates' transfer: it lays down that the doctor must examine the inmate before his/her transfer and elaborate a suitable report describing the inmate's health conditions and referring any possible injury he/she may present. Once the inmate arrives at his/her final centre the officer has to ask him /her if he presents any kind of injury. If the inmate presents injuries, the doctors of the centre must immediately examine him/her and elaborate a written report. Should the doctor notice the existence of injuries, the medical reports has to be sent to the judicial authority which is competent (Annex 16).
5. Circular 5/2004 on emergency inmates' transfers: this circular establishes the procedure to be followed in case of serious internal disputes requiring the immediate transfer of inmates to other centres. The action protocol includes the presence of an officer who has to ensure that the medical examination and the report are carried out both when the inmates leaves the first centre and when he/she arrives to the new centre.

On the other hand, all inmates can request medical health care based on this or other reasons and are always and extensively examined by medical experts. In accordance with the instructions given from the Health Unit of the central services of the Justice Department of Catalunya, all doctors of prison centres are advised to elaborate statements and injury certificates as clearly as possible so as to avoid misunderstandings and uncertain interpretations.

As regards the content of the information, please find below a set of advices focusing on fundamental aspects which cannot be ignored. The protocol includes the following sections: date and time when health care is provided; personal details of the patient, such as age, gender, description of each and every injury noticed, including haematomas, punctured and gunshot wounds, trajectories, entrance and exit holes, precise topographic localization of each and every injury and whether they are recent or old injuries as well as their prognosis; the description of the general conditions of the inmate at the time of the examination, and the existence of possible signs of drug addiction such as evidence of recent injections, withdrawal syndrome, etc.

It is worth to underline this procedure followed by the health care units of the prison centres is carried out both at the arrival of the inmate and during his/her stay in the centre. The need for medical examination can be due to the use of force of other inmates or of prison officers; however, this circumstance is not mentioned in the report, unless the doctor has witnessed the facts, since otherwise he/she will not know for certain how it occurred. Therefore the facts are reported according to the declaration made by the injured.

Section 85

The CPT recommends that the prison staff must be advised that no kind of threats or intimidation against an inmate who has claimed will be allowed; nor any attempt to avoid that the inmates' requests or claims reach the surveillance bodies will be tolerated and it will be liable to serious penalties.

It is not infrequent that the legal services of the Generalitat have to enter an appearance in proceedings due to the legal actions taken by the inmates. On the other hand, the penitentiary legislation establishes that all interns have the right to make both oral and written requests, claims and appeals before the penitentiary Administration or the authorities, bodies and institutions which are competent to hear and decide; if they prefer, inmates can also make their complaints in closed envelope, which will be delivered with acknowledge of receipt. **As a result, if there is rational evidence that the prison staff is impeding the exercise of this right, the officers will be surely punished.**

As regards the Quatre Camins Prison Centre, the CPT reports that some inmates declared having been threatened or punished because they had made formal complaints and that another inmate declared that he lost his job for the same reason. The CPT also reports that an inmate declared that he had witnessed an aggression against another inmate by a prison officer and that the staff threatened to classify him as "dangerous criminal" if he gave evidence of the aggression.

First of all, on that point, it must be emphasized that prison officers are trained in the respect for the fundamental rights of the inmates, in accordance with the content of the present legislation within a democratic rule of law as it is the case in Spain, and, consequently in Catalunya and, more concretely, according to articles 3, 49 and 50 of the General Penitentiary Law and articles 4, 52, 53 and 54 of the Penitentiary Regulation.

Concerning the declarations of some inmates made without any kind of evidence, nothing can be said, except that in the Quatre Camins Penitentiary Centre there is no practice aimed at impeding or pressuring inmates not to make claims or requests; as a clear proof of it, during the last six months of 2007 more than 500 requests and claims addressed to the judge responsible for the execution of sentences were dealt with by the centre itself; 200 of them had been made in closed envelope, and this emphasizes the privacy of the procedure. In addition, other authorities such as the Ombudsman of Catalunya (Síndic de Greuges), the penitentiary Services Secretary, the police court, ect. receive each and every request and complaint that inmates can address to them.

As regards **the Brians 1** Prison Centre the same can be said: in 2007 473 inmates' requests and claims were dealt with and answered; 200 requests in closed envelope were also dealt with and therefore, their content is not known.

Section 86

The CPT also requests information on the results of the investigations and judicial actions concerning prison officers in the cases of alleged ill-treatment in relation to the episodes occurred in October 2004 in the Quatre Camins Prison Centre.

Concerning the alleged ill-treatment perpetrated against the inmates in the morning of May 1st 2004 in the Quatre Camins Prison Centre (to which the CPT report seems to be referring to), those facts were brought to trial (first instance criminal court nº 3 of Franollers – abbreviated procedure 29/2007) but the Generalitat de Catalunya ignores the present situation of the legal procedure since it did not appear in court as an interested party due to the existence of a conflict of interest. Therefore, it is impossible to add more information as required by the Committee, which anyhow has already received the information that at that time the Administration of Catalunya had managed to gather.

II. 4.2 ii Coercive measures.

Section 91.

The CPT recommends the authorities to adopt all measures needed to ensure the application of the principles and guarantees established in section 91 in all prison centres using binding procedures.

Concerning the inmates' binding procedure, the basic regulation is foreseen in art. 45 of the General Penitentiary Law. It establishes that only those measures contained in the regulatory legislation with prior Director authorization can be adopted in the following cases: a) to prevent inmates' jailbreaks or acts of violence; b) to prevent self-inflicted injuries or against third persons or things; c) to overcome inmates' active or passive resistance to the orders of prison officers when acting lawfully.

This article continues as follows: *"Should it be necessary, in case of emergency, to adopt such measures, this will be immediately reported to the Director who will immediately inform the judge responsible for the execution of sentences; the implementation of these measures will be only aimed at reestablishing normality and its duration will be limited to what is strictly necessary"*.

On the other hand, art. 71.2 of the Penitentiary Regulation establishes that if the officers, when adopting the above mentioned measures, should notice abnormalities or any other sign or fact which could represent a perturbation of the normal life of the centre, they will immediately inform the Head of Services, without prejudice to the fact that they are allowed to carry on using those measures described in the following article.

In addition, article 72 details the coercive measures, which include: provisional isolation, physical force, rubber made restraint methods, appropriate sprays and handcuffs; it also foresees that the use of such measures and means *"will be proportioned to the aims to be attained and will never represent an hidden punishment; furthermore, these measures will be only implemented in case of lack of any other less harmful mean and their duration will be limited to what is strictly necessary*". The second paragraph of this article ends by stating that "in case of provisional isolation, the inmate will be regularly examined by a doctor".

The reality of prison centres recommends, under exceptional circumstances, the adoption of inmates' mechanical binding procedures during a certain period of time, using restraint belts, always in accordance with the legal guaranties required for both their implementation and monitoring, provided that these procedure is considered as less traumatic and harmful for the inmate, without prejudice to the aim to be attained. Its implementation has to be governed by the principles of necessity, proportionality, respect for the inmates' dignity and for the fundamental rights.

As a result, and taking into account what has been said up to now and the action protocols set in Circular nº 3/2004, of 29th of November of the Penitentiary Services, Reintegration and Youth Justice Secretary on action procedures in case of violence of patients within psychiatric wards and in Circular nº 2/2007, of 18th November on mechanical binding procedures, the following considerations have been laid down:

1. **The need for restraint measures or mechanical binding can be due to behavioral alterations or to other causes issuing from any kind of pathologies.** Both in the first and in the second case, the mechanical binding procedure represents an exceptional measure to be adopted only in emergency cases and its duration has to be limited in time and has to be extensively monitored by the appropriate staff.

2. **From a behavioural point of view, a person can be submitted to a mechanical binding or restraint procedure when he/she behaves violently and aggressively, causing or being likely to cause injuries to him/herself, to third persons or material resources and infrastructures if he/she is not stopped.** From a health care point of view, this measure can be applied to a person in a state of serious behavioral agitation issuing from organic or psychic diseases or whose behaviour, although not necessarily violent, can hinder or prevent therapeutic programmes, such as the withdrawal of probes or catheters or the administration of medicines. The former will be carried our in especially designed rooms within the closed system wards or in the spaces aimed at serving disciplinary sanctions consisting in isolation; the latter will be carried out in the appropriate first-aid rooms.

3. **When an inmate is moved to the binding rooms**, handcuffs will be temporally used and during the isolation with binding procedures approved restraint belts will be used in the prone or supine position (depending on the circumstances) but **avoiding in any case forced positions** such as the *Superman* position (diagonal arms crossing) referred to in the CPT report which has been expressly banned by the Circular 2/2007.

4. **Health care bindings are ordered, directed and monitored by doctors, while the ones due to behavioral agitation, as soon as the person has been put under control and bound, he/she will be examined by a doctor of the prison centre** who will have to determine if, in his/her opinion, the situation can be analysed by a health care point of view and write a report stating if there is any clinician impediment to apply the isolation procedure with mechanical constraint. On this point we deny the declarations included in the CPT report concerning the medical supervision of the binding, because they are mere speculations lacking of empirical establishment of its practical application.

5. **In any case, a direct and regular assessment of the inmate's state of health will be carried out, in accordance with the content of the above mentioned Circulars.** As regards the staff of the internal régime area, they will sign in the monitoring schedule for each and every concrete case; the staff of the health care area will report what has been done in the inmate's medical report.

6. **In order to let the bound inmate to relieve him/herself, some binding means will be temporally withdrawn and he/she will be given appropriate health care devices.** In case of bindings due to behavioral alteration, the withdrawal of binding devices will have to be authorized by the Head of Services who is allowed to adopt any other additional security measure, depending on the concrete circumstances.

7. **Finally, our legal system requires that all binding procedures need to be reported to the judge responsible for the execution of sentences, with the indication of the date and duration of the measure and of the circumstances justifying its adoption.** In this respect and according to art. 76.1 of the General Penitentiary Law, this judicial body is responsible for, among other things, *"the protection of the inmates' rights and the correction of any abuse or deviance from the norms of the penitenciary régime";* and it is also worth to emphasize that up to now no judicial decision has ever stated that the action of the Administration and, in this particular case, of the Generalitat de Catalunya, was being arbitrary, disproportionate or excessive as regards the application of the protective measures described above.

Concerning the examples included in the CPT report, the following specifications can be made:

1.- Quatre Camins Prison Centre:

The report tells that on the 10th of September 2007, an inmate was retrained in his/her movements from 10 am to 1.15 p.m. of the following day, that is during more than 27 hours, because he/she was extremely agitated and nervous and had insulted the prison officers.

In its assessment of the situation, the CPT is likely to have confused the application of the coercive measure "cell isolation" with "binding" since on the 10th of September no binding procedure was carried out in the centre, while, on the contrary, during the period of time reported by the CPT, an inmate was temporally isolated.

On the 10th of September, an inmate, whose release order had recently been revoked, was temporally isolated from 10 am to 1.15 pm of the day after (enclose please find the report on the facts and the communication made to the judge concerning the beginning and the end of the provisional isolation). The isolation was due to the fact that the inmate gave no guaranties as regards its willingness to carry on a friendly life together with the other inmates, and was used to threaten, insult, resist the officers' orders and in addition he was also found in possession of an altered blade; as a result the inmate was retrained in his/her movements with an aim at avoiding injuries to other persons. As you can see from the reports and notifications, the inmate was examined by the medical service which noticed no physical or psychic impediment to adopt the isolation measure.

On the 19th of September, at 8.50 am, the same inmate threatened and attacked another inmate and his aggressive attitude resulted in another isolation measure. At 4.50 pm and due to the suicide ideas, the doctor ordered a binding procedure to preserve his physical integrity. During the procedure the inmate was examined by a doctor and at 10 pm the measure ended. So the duration of the measure was of 3 hours and 10 minutes.

The inmate remained isolated for the rest of the night and on the next day, on the 20th of September, at 11.15 am he had to be restrained once again provided that he threatened both the prison officers and the doctors during the medical examination and declared that "he wanted to die" and tried to keep them out of the cell while they were trying to enter with an aim at avoiding self-inflicted injuries. The inmate was repeatedly examined both by officers and doctors and at 7.15 pm the binding procedure ended and he was moved to the medical ward in order to assess his health

conditions. The doctor tried to consider and analyse possible psychiatric problems, but the inmate kept on wondering about suicide and since he gave no guaranty as regards his willingness not to inflict injuries on himself, he was once again submitted to a binding procedure. The inmate remained restrained and isolated until 9 am of the following day and was regularly examined by the medical service and the officers. Enclose please find the reports on these facts. (Annex 19).

As you can see from the enclosed reports, the binding procedure was performed with an aim at avoiding injuries to third persons or self-inflicted injuries and that he was regularly examined by the doctors of the centre, who did not notice any kind of physical or psychic impediment which could discourage the application of this measure, in accordance with the valid legislation in this field.

2. Brians-1 Prison Centre.

As regards this penitentiary centre, on the 17th of September an inmate was temporally isolated since she had attacked other inmates. The isolation lasted for six hours and then other preventive measures were adopted but no binding procedure was performed.

On the 19th of September another inmate was restrained in her movements from 9.30 pm to 8 am of the 20th of September due to her aggressive attitude against other persons and because she declared she wanted to throw herself downstairs and that she wanted to kill herself. Once she had been examined, the doctors reported that her attitude was not due to psychic alterations but to a manipulative attitude. This is why the binding procedure was performed in the Special Department instead of the first aid room, and it last until the inmate calmed down. In any case, the medical examination protocol was respected throughout the entire duration of the procedure.

3. Male Prison Centre of Barcelona, La Modelo.

Section 87 of the CPT report describes the conditions of an inmate who, on the 9th of April 2007 had been submitted to a binding procedure for 12 hours, even though the centre knew that he suffered back pain and that the position could have negative effects on his health.

It is worth to emphasize that the application of such a measure followed an attempt of aggression against prison officers, as described in the officers' report enclosed as Annex 20. This aggressive attitude represents a constant in his penitentiary record, who was submitted to a number of disciplinary measures due to serious and very serious misconduct (threatens and attacks against prison officers). In cases like this, which show an extreme lack of adaptation to the penitentiary regime, the direction of the centre has to consider whether to adopt or not coercive measures that are prejudicial to the inmates, weighting the prejudice that the can cause to himself or to other persons.

However, binding procedures are always performed under the supervision of the medical staff, as you can see from the enclosed medical report, and the measure's duration is limited to what is strictly necessary. The binding procedure was carried out on the 9th of April 2007 at 10.15 pm. The measure was ratified at 12.30 am and 4 pm, always under medical supervision. At 6.30 pm the medical staff gave him psychotropic medicines and at 7.30 pm his hands were freed to let him have dinner. Finally at 10.15 pm of the next day the doctors ordered to end the binding procedure, since the inmate was complaining about his back pain and he was showing a more reasonable and calmed down attitude. Furthermore, until the measure ended, the prison officers, who reported the evolution of his attitude and conditions, monitored the inmate every 30 minutes.

As you can see from the medical report enclosed in Annex 21, on the 15th of April 2008 the inmate was submitted to a magnetic resonance imagining in order to assess the entity of the back injury the inmate had been complaining about with the traumatologist of the prison centre. The results show the existence of a prior injury caused, as the inmate reported, by an occupational accident and no further aggravation was noticed.

According to section 87 of page 53 of the report, *"on the 14th of June 2007 an inmate, who does not speak Spanish and who is allergic to fish, eats this food by mistake. When trying to explain the problem to a prison officer, his attitude is judged aggressive and is moved to the "punished room" where he remains immobilized for three hours. The next day he is punished for his attitude and has to stay isolated five days in his cell"*.

Please find enclosed in Annex 22 the report of the prison officers on these facts. As you can see from the report, the attitude of the inmate caused a lot of disturbances in the lunch room and he also resisted to the officers' orders and tried to attack them; this is the reason why the inmate had to be submitted to a binding procedure (during two hours, not three as stated in the report) and was then punished.

As regards his alleged allergy to fish, no note appears in his medical record as a result of the medical examination to which he was submitted when he arrived to the centre on the 5th of April 2007. As stated in the medical report, the first mention of possible intolerance to fish dates back to the 17th of April, and in any case, no allergy diagnosis was made.

II.4.2 iii Inmates submitted to special regimes

Section 96.

The CPT recommends the authorities to adopt all necessary measures to improve and support the promotion of activities for the inmates submitted to special regimes, particularly in the Brians 1 and Modelo centres, according to the observations expressed in this report.

First of all it is necessary to state that, in the framework of the reintegration policies developed by the Penitentiary Services, Reintegration and Youth Justice Secretary of the Justice Department, great attention was given to the Closed System Special Departments of the penitentiary centres in Catalunya (CSSD), provided that these policies play a fundamental role within the prison centres as regards the existence of a secure and friendly life environment and represent a way to promote the development of social-oriented behaviours within the male and female inmate population with an aim at facilitating their later adaptation to the ordinary regime.

In this sense, in 2001, in order to adapt as much as possible the legal and regulatory norms with an aim at attaining the objectives of this kind of special departments, Circular 5/2001 was approved on the closed system intervention framework programme in the prison centres of Catalunya. Its goal is the introduction of a new work and intervention model aimed at achieving the following objectives:

- To prevent the application of a closed system.
- To use the principle of flexibility established in article 100.2 of the Penitentiary Regulation when classifying the inmates.
- To adopt specialised measures within the closed system.

- To adapt the style of life to the different danger levels shown by the inmates of the centre submitted to a closed system.
- To improve the reintegration process of inmates to the ordinary regime.

So, this Circular is applied both in Brians 1 and in the Male Prison Centre of Barcelona.

More concretely, as regards the activities and support within the centres mentioned by the CPT in its report, it is important to emphasise that both special departments have multidisciplinary teams that lead the treatment programme. Two education workers, a psychologist, a lawyer criminologist and a support teacher compose the team. The social worker assigned to the inmates meets their needs according to their evolution during the closed system treatment stage.

In accordance with Circular 5/2001, these professionals are responsible for both the individual and the group assistance to the inmates.

The **individual assistance** is rather a general one, taking into account the building characteristics of these special departments, as well as the special needs of the inmates. The inmates living in these special departments know well the assistance hours of the experts assigned to the special departments, who attend on request of the inmates or of other professionals (security officers, educational team, teachers, medical staff, etc.) or as a result of the particular needs of the inmates.

All the experts of the multidisciplinary team of the special department assist during the first days all new inmate. Thanks to this early assistance, they can both plan the intervention and treatment strategy to be followed during the closed system stage and assess the actions which can have positive effects on the cognitive-behavioural development of the inmate, through the functional analysis of the problems which led the inmate to the special department.

In addition, this early contact allows the inmate to get familiar with the norms, life conditions, foreseen changes, etc. The later individual assistance, on the contrary, is meant to meet all the needs and demands that might appear during the inmate's residence time.

Apart from the individual assistance foreseen in the special departments of the Brians 1 and La Modelo prison centres, the reintegration experts also carry out a set of **group activities** whose aim is twofold: normalised training and socio-cultural activities. These activities are offered in both special departments (School, workgroups, games, movies, etc.) not only allow the inmates to socialise within a group environment, but also show how they interact with other users (professionals and inmates).

Likewise, we should take into account the closed system modalities (articles 93 / 94), and the assigned stage, whether reviewed or not, of the state in which the male or female inmate is now (1 / 2). There is an available offer as to group interaction spaces, whereby inmates could be able, without direct supervision by any member of the reintegration staff, to perform group interaction. Such activities (yard, TV, games, etc) allow offering the inmates a group socialising space in order to further an evolution oriented to the integration into the ordinary system.

Therefore, life modalities as described in article 93 offers, whenever the inmate's characteristics allow, two weekly training interventions of one hour each (psychologist and/or lawyer criminologist); and one weekly one hour teaching intervention.

In life modalities described in article 94 (long and short programme), the intervention will depend on the inmate's stage. For stage 1, 4 daily hours are established, related to common life, shared between the yard and the day classrooms; moreover, a group activity is offered daily, having a duration of one hour. In stage 2, four hours are established, shared between the yard and the daily classrooms, together with up to three hours of group activity monitored by reintegration professionals.

Concerning the environment to be developed in the special departments, it should be mentioned that, there, **positive relationships have to be established between the staff and the inmates**. Such positive relationships are generated through various means, such as: performing reintegration activities, the interaction through individual means with the staff assisting these special departments, using especially the formula by which agreements are adopted as to life modalities of inmates residing within the afore mentioned departments. As the CPT already knows, all decision-making process is made by all the multidisciplinary staff members, with an obvious representation of the warden's service.

As regards the **recruiting process of the staff lending his assistance at the special departments**, professionality criteria must guide the appropriate location of different professionals within the intervention unit. From this perspective, the reintegration professionals are qualified to perform the tasks that are entrusted them from different areas (education, technical, social, etc.). Likewise, we should point out, that all the staff who works in the above mentioned prisons and most particularly within their special departments, comply with any criteria that civil service regulation demands as for the access and carrying out of civil functions.

Lastly, the CPT wishes to be informed of the reasons due to which the inmate mentioned in section 95.3 of its report is not allowed to associate with other inmates.

The aforementioned section states that the CPT delegation found, when visiting the penitentiary centre Brians 1, an inmate who had been denied the possibility to stay with other people all along nearly seven months, so that his situation was characterised by the practical lack of real interaction with the prison staff and the other inmates.

On this point, Spanish authorities firmly deny the existence of such a case. Depending on the life régime, inmates within a special department can go out with more or less large groups. Strict control is only paid to the fact that inmates having any lack of compatibility (previous fights, well-grounded suspicion of association in order to carry out any activities contrary to the norm) be coincident in the same group. However, there is no case of any situation as attested by the CPT report, after consultation was taken with the Brians prison and the competent authority in Catalunya, who have informed in the same sense as indicated herein.

Section 97.

The CPT recommends that the prisoners submitted to a special system be not kept in the same unit as the ones submitted to isolation sanction as a disciplinary measure.

In this respect it is necessary to start with pointing out that the section fourth of Article 254 of the Penal Regulation establishes, in accordance with the sections fourth of Articles 42 and 43 of the General Penal, that the isolation punishment will be served within the compartment usually occupied by the inmate, and, in the assumption that it shares it with others, or owing to his own safety or the good governance of the establishment, the inmate will be transferred to an individual one having similar size and conditions.

The practical current situation of the penal institutions does not allow, in most cases, for the sanctions of isolation to be served within the same cell that the inmate usually occupies. This is due, first of all, to the difficulty entailed by the fact that all inmates have an individual cell, owing to the high increase undergone by imprisoned population for the last few years, and secondly, to the needs imposed on to attain good governance of the establishment, which make it reasonable for this kind of incommunicado situations to be carried out in a cell different from the one usually occupied by the inmate, so as to allow to arrange, for every inmate, the received provisions and services, such as yard-strolling, the use of common services, the occupational workshops, study classrooms, etc.

Owing to this reason, serving the disciplinary sanctions consisting in isolating the inmate is carried out in units different from those they usually live in.

On the other hand, some of the earliest construction penitentiary centres are not provided with a specific department to locate the inmates serving an incommunicado sanction. In this case, the special departments are the places that are more in line with legally established features and allow, at the same time, for applying these inmates the corresponding regime without either creating dysfunctions or alterations in the kind of services provided to the remaining residents in the unit.

Thus, in the centres which are not provided with a special department to these effects, the inmates who are serving an in-cell isolation sanction are moved to special departments in which, actually, some of the cells are occupied by inmates serving special regimes. However, it is relevant to emphasise that, even though cohabitation may occur between both types of inmates, there is no coexistence whatsoever among them, since they belong to two collectives apart from ordinary coexistence, although for different reasons and with different regime features. This enables both collectives to be treated in an absolutely specialised way.

As referred to the specific cases that appear in the report approved by the CPT, which mentions the cases of the Penitentiary Centre for male inmates in Barcelona and of the Penitentiary Centre Brians 1, it is necessary to proceed to the following explanations:

The Penitentiary Centre for male inmates in Barcelona has not changed its physical location since inaugurated in 1904. Despite continual efforts to maintain its facilities and adapt them to the needs having appeared due to the development of penal law over the years, this circumstance originates, so far, that the lack of specific space for serving those sanctions consistent in isolation may not be solved.

The aforementioned fact notwithstanding, there are within the special department of the centre two differentiated areas, separated from each other by a door. The first area is occupied by inmates serving some isolation sanction and those who, in spite of not being assigned a special regime, are in situation of provisional isolation. The second one is occupied by inmates allocated special regimes. Access to the yard is reserved exclusively to this kind of inmates, who have no other access available.

A similar situation is found in the **Penitentiary Centre Brians 1**. This centre has a special closed-regime department in which only inmates assigned special regimes are located, and a special department which is located by the inmates assigned special regimes as well as by those who, without having been assigned this kind of classification, are serving an isolation sanction or are in a situation of provisional isolation. **However, neither in this case is there any kind of coexistence among these different collectives**.

Even though it is true that the situation in both centres would improve, if wider spaces were available in these establishments, it is assumed that **the motivation of the personnel assigned to the special department of the establishment cannot or must not be seen as altered because of the fact that, within a common unit, inmates having different classification are found, since it is fair to require from the staff providing his services in the selfsame unit to recall, in any case, that the direct addressees of their work are persons, each of them with specific problems, and therefore treated as such in accordance with their specific needs**.

Owing precisely to this reason, these needs would not be homogeneous, either, should the special department be only aimed at the collective of inmates assigned special regimes, since the different personalities and personal circumstances of each of the inmates require a different type of assistance, to be provided by the staff in charge of their treatment.

It cannot be admitted that the presence of a collective of inmates having been sanctioned or provisionally isolated should entail less motivation from the staff entrusted with the treatment, since the fact of finding himself in one of these situations should not imply for the inmate his being deprived of activities having an educational, cultural, or other type, if these activities could positively have effect on the inmate´s rehabilitation. In accordance with what is established in the instruction 3/1993 of the Directorate-General of Penal and Rehabilitation Services, they will undergo a follow-up performed by rehabilitation staff of the centre who, in any case, have to lead his efforts in order to ensure, as a first step in the rehabilitation of the inmate, the inmate´s reintegration into the ordinary regime.

On the other hand, **treating inmates that serve an in-cell isolation sanction does not require training different or higher than that of the staff in charge of the treatment of inmates assigned special regimes**. Of course, inmates assigned a special treatment regime can also be sanctioned, in case of highly serious infringement, with in-cell isolation measure, and the staff in charge of the module is perfectly enabled to face this situation.

Nevertheless, it has to be pointed out that that the Penal Administration in Catalunya is now **undergoing a full update of its facilities, and creating new penitentiary centres**. Thus, up to now, the following centres have been designed, in addition to the open system facilities:

- Penitentiary Centre for juveniles in Quatre Camins, in la Roca del Vallès (Barcelona).
- Penitentiary Centre Lledoners, in Sant Joan of Vilatorrada (Barcelona).
- Penitentiary Centre Els Plans, in Tàrrega (Lleida).

- Penitentiary Centre Mas d'Enric, in El Catllar (Tarragona).
- Penitentiary Centre Puig de les Basses in Figueres (Gerona).
- Penitentiary Centre for Preventive Prisoners (Barcelona).

All of them, one of which is already being built, have been designed in accordance with the current needs of penitentiary centres have present, and are already provided with an **exclusive and differentiated department** for those inmates having to serve an isolation sanction or who, owing to whatever reason, must be provisionally set apart from the rest of the inmate population.

Besides increasing the total amount of penitentiary places in Catalunya, opening these centres must allow to close establishments which, due to their being very old, have got any kind of architectural deficiency re current needs, as is the case of the Penitentiary Centre for male inmates in Barcelona.

To conclude, and owing to the considerations aforementioned, it must be denied that the fact that inmates assigned special regimes live together in a common module with inmates under sanction of isolation or of provisional isolation affects in any way the motivation or the working results of the job performed by the staff, who provides a service in the special department of these centres.

Nevertheless, and well aware that this situation can be improved with the full separation offered as a proposal in the CPT issued report, several facilities are being provided to enable this to be done in the new penitentiary institutions that are being built or in design, and which will replace those having a surface-area deficit to allow for the creation of a new department with the aim of accommodating those inmates that would be serving an in-cell isolation sanction.

Section 98.

The CPT would appreciate the comments of Spanish authorities on the excessively lengthy limitations as to phone calls or sending letters to the inmates within special departments, something that has been reported to the CPT several of the inmates.

Re the requested comments, the following explanations must be given:

Re the communication system of the inmates in special departments, compared with that of the inmates coexisting under the ordinary system, the rules currently in force recognise in an express way the rights of the former. As stated, in particular, in the first section of the Article 51 of the Penal General Law, the inmates are allowed to communicate periodically, in their own language, with their family, their friends and the accredited representatives of penal cooperation organisations and establishments, an exception made for cases of incommunication by judiciary order.

The fourth paragraph of the same section adds the possibility that communications therein described might be made by phone, in the cases and with the guarantees granted by the Regulation.

On the other hand, the Penal Regulation, approved by Royal Decree 190/1996, of 9 February, develops this regulation and implements a series of provisions aimed at ensuring that these rights be enjoyed by the whole imprisoned population, according to the following rules:

- It is guaranteed for the inmate to immediately apprise his family and lawyer of his entry into a penitentiary centre and of his being transferred to another establishment at the moment he joins it.

- The penitentiary institution staff is under the duty of immediately informing the inmate´s family in case of any serious illness undergone by the latter, and to allow him to be visited in the infirmary of the centre, should he not be able to go to the visiting-rooms.

- The possibility of granting the inmates extra visits is foreseen as a reward, and also in case of justified and urgent motives.

The centre has got as an imposition the duty to organise visits and communication, in order to satisfy the special needs of foreign inmates.

On the other hand, the Penal Regulation also settles **the amount of communications that the whole of the inmates are allowed to carry out**. By virtue of this, the inmates must be guaranteed the right to carry out two oral weekly communications (in a phone booth) of a minimum duration of twenty minutes, a duration being able to be cumulated up to forty minutes, so as to prevent the possible difficulties of displacement faced by the visitors. No limitation is set re the amount of written communications to be maintained. The inmates are also guaranteed to those inmates deprived of ordinary leave permits a monthly communication of intimate nature, with a one- to three-hour duration, and another communication with his relatives, having the same duration.

The inmates have also the right to be granted coexistence visits with their spouse, or with any other person with whom a similar affective relationship is maintained, and also with his children of less than ten years of age. These visits will have a maximum duration of six hours.

Finally, the Article 47 of the Penal Regulation settles the matter of phone communications: according to them, the inmate will be able thus to communicate only when his relatives are live in far-away places and their displacement to visit the inmate is hindered, or when the latter must apprise of any relevant matter to his counsel for the defence or to other people. The director of the centre can allow to the inmate´s carrying out other phone communications, on the latter´s previous request. In any case, these communications must not have a duration higher than 5 minutes.

In practice, the penitentiary institutions implement the above provisions with the maximum possible flexibility, within the range allowed by the duty to guarantee safety and good policy within the establishments.

Re another order of matters, according with what is stated in the section 1, a) of the Article 29 of the Regulation relating to the Organisation and Functioning of Penal Implementation Services in Catalunya, approved by the Decree 329/2006, of 5 September, it behoves the Board of Directors of the penitentiary centre to determine the days within which the inmates may communicate, and the timetables of the aforementioned communications. Thus, each of the establishments takes care that every inmate within the centre be able to carry out at least those communications allowed him by law.

Re the inmates under ordinary system, **the number of phone calls that they are allowed to carry out has been increased in all centres**, to five a week. Furthermore, the director of the establishment authorises the inmates to carry out additional calls when the latter must tell any relevant matter to their counsel of the defence, or to other people.

The **maximum call time has also been increased to up to 8 minutes**. This increase, more than a fifty percent as to the duration foreseen with respect of what the Regulation stipulates, has been deemed necessary in order to allow for an easier communication between the inmates and their families, since it allows a fuller conversation to be kept between two calls.

As for those classified as inmates under closed systems**, they are allowed to maintain an amount of oral, familiar and intimate communications equal to that of the inmates classified as being under ordinary system**. There is only a minor difference in some penal institutions, re communication duration, always with full respect of the legally established minimum duration, and the difference being determined for organizational reasons.

Re the phone communications that this group is allowed to carrying out, in accordance with the requirements made compulsory by the good governance of the penitentiary institutions, the amount of weekly phone communications ordinarily authorised is decreased. Even so, in any case, at last, a weekly call may be ordinarily carried out; and as happens to inmates under ordinary system, the call will have a maximum duration of eight minutes, with no necessary prior request from the director of the establishment. On the other hand, the director of the establishment will authorise additional phone calls, provided that the requirements thereof established in the Article 47 of the Penal Regulation, as referred before, are complied by.

Finally, reference must be made to the situation of inmates serving in-cell isolation sanctions and that, owing to the very nature of the sanction, will not hold any communication while the sanction is served. It must, however, be taken into account that the maximum duration of this kind of sanction is fourteen days. In case that different sanctions of this kind be cumulated, owing to any motive, and that the inmate should be kept fourteen days or more under isolation system, the measure will have to be approved by the judge responsible for the execution of sentences, in accordance with what is established in section 1 of the Article 253 of the Penal Regulation. The inmates under this situation are thus allowed to carry out the calls necessary in order to postpone the oral, familiar or intimate communications previously agreed, and are of course allowed to communicate with their counsel or other professionals.

Re the administrative and legal control of the fact that each establishment should respect the right to communicate granted to the inmates, it is necessary to emphasise that the control for the establishments to comply is carried out, in an initial stage, by the Secretariat of Penal Services, Rehabilitation and Youth Justice, which checks whether accessing to the inmates under such situation be not unduly restricted.

On the other hand, the Court responsible for the execution of sentences is competent upon deciding about the complaints and appeals issued by inmates that consider that any of their rights is being harmed, something that, in this case, would refer to the right to communicate with his relatives and with other people. It must be added, furthermore, that in accordance with what is established in the Article 50 of the General Penal Law and the Article 53 of the Penal Regulation, the inmates have the right to issue the complaints considered material re any action brought before the aforementioned administrative bodies, or before the Penal Court penal court responsible for the execution of sentences. These complaints can be sent, should they wish so, in a closed envelope

which will not be opened until arrived to its addressee, in order that, further on, the control of all the activities considered as not adjusted to right might also be carried out, thus enabling to check and investigate whether there has been any kind of breach to established rules so that, should this assumption be positive, the necessary measures be adopted.

Finally, these same rules allow any imprisoned person to issue his complaints, against any action carried out by the penal institution, if it is deemed suitable, to the Síndic of Greuges, a body which, in accordance with what established Status of Autonomy of Catalunya and the Law 14/1984, of 20 March, of the Síndic of Greuges, is aimed at defending the citizens´ fundamental rights and public freedoms.

As relates, finally, to the treatment of cases of the inmates´ want of economic resources to face the expenditure in phone calls and postal services, it is necessary to emphasise that, as to this date, all the penitentiary institutions of Catalunya supply a poverty subsidy to all the inmates that do not receive an income in their pecuniary account having a monthly average amount of 23 Euros; the destitute inmate is granted this amount, with which he can make phone calls and send letters, and is given a true and effective opportunity not to be left isolated by lack of the minimal economic resources. This subsidy has been established precisely in order to allow all the inmates to afford the expenditure entailed by phone and postal communications.

As a conclusion, from all that has been previously stated it may be implied that the inmates in special departments of any penitentiary institution are granted the right to keep communications with their relatives and friends, in accordance with what is legally established, in a way as complete as possible, taking into account the limitations set owing to the safety reasons, the interest of the treatment and the good governance of the establishment. These communications are not hindered for the inmates´ want of economic resources, since those under economic uncertainty are granted a subsidy in order for them to have the resources necessary to afford the expenditure that communication might entail.

Section 99.

Throughout the quarterly revision procedure, the inmates under special system must be consulted in a more active way, and, should it be deemed appropriate, they must be provided with greater assistance, in order to help get prepared to return to the ordinary system.

The CPT report collects in a correct way what are the conditions to apply the closed system of life established by the Organic Law of Penal System and the Regulation developing it, as well as the formula according to which the Treatment Board of the Penitentiary Centre decides upon the proposal to apply the closed system.

The resolutions to apply this special system establish the application of the kind of life, in accordance with the current rules, together with the proceedings appearing on the Circular 5/2001 (which approves the intervention framework programme in the closed system units and departments of the Penal centres of Catalunya).

The application of the different methods of life has entailed a perspective review, in function of the life modality assigned since the moment of the resolution:

- As applies to the Art. 93 of the Penal Regulation (dangerous individuals), every time this allocation of the special life system is reviewed, as well as later on, reviews are hold once every six months (at most), if the applied modality has not been redrawn, owing to the concurrence of averaged factors as to positive development, such as: an interest in taking part and collaborating in programmed activities, sanctions cancellation or lack of sanctions during a prolonged time interval, together with a suitable relationship with others (as established by the Art. 92 of the Penal Regulation currently in force).

- As applies to the Art. 94 of the Penal Regulation (non-adapted individuals), without exclusion of the life modality (long or short programme), the perspective revision will be always made after three months. In the case of inmates to whom Art. 94 (short programme) is applied, the review of their modality of life and the compulsory reconsideration of their prison degree will be always made after three months (at the utmost). In the case of inmates to whom Art. 94 (long programme) is applied, the review of their modality of life will be proceeded to after three months, and the reconsideration of applying the closed regime will be made after 6 months at the utmost, without prejudice that the inmate´s evolution along the staged-programme follow-up might allow to effect a favourable change, as to the reasons leading to the application of this special life system.

The aforementioned reviewing procedure of the modality of closed system life is now applied in all the penitentiary centres in Catalunya, including, of course the DE (Departamentos Especiales, Special Departments) of the Penitentiary Centre of Brians 1 and of the Centre "La Modelo". Furthermore, we may add, as to this, that the Drirective Centre ensures the application resolutions of the regimes, as stipulated in Articles 93 and 94, to request the revisions of those regimes, usually after a period of three months, whether in Art. 93 (dangerous individuals), or in Art. 94 (short and long programme) resolutions.

The Special Departments of the Penal Centres of Brians 1 and La Modelo make use of a procedure, to assist the prisoners located within the DE, similar to those employed in the Penitentiary Centre of Quatre Camins. In all of them there are treatment professionals assigned to individual and group intervention assistance to the inmates of the DE. The aforementioned professionals are constituted as a multidisciplinary team of educators, psychologists, jurists and criminologists. All of them are in charge of reporting, when the inmate enters the DE and during his further stay, about the reasons for the application of the special life regime, of his evolution along the established stage programme, of the reassignment to a closed regime of life or of the ending of the closed regime, and/or the return to the ordinary regime. They are also in charge of the decision-making processes (Treatment Board), occasionally through proposals to the Directive Centre (re the change of the life or regime modality), and, occasionally, making references related to the development of the stage programme (binding decisions).

All the agreements made by the Multidisciplinary Team and the Treatment Board which result in changing (or not changing) life modality, in changing (or not changing) life regime, as well as in the moves along the stage programme are officially notified, in written, to the inmate, as well as verbally notified him at the time of the professional intervention. All of them may be appealed and subject to the allegations stipulated by the rules, before the Directive Centre as before the Judge responsible for executing the sentences.

II.4.2 IV Female Inmates

Section 100.

The CPT recommends that the authorities should study the possibility of providing the female inmates with differentiated conditions.

In the last few years, many projects and intervention proposals have been put forward, re working with imprisoned women, both as current and as former inmates. This furthering has been wished to be offered from prospect both participative and conducive to the civil society; different activities and working meetings have been established with the penal staff, and commission meetings have been established with organisations and civil institutions involved in assistance to women. It must thus be emphasised the work furthered together with the ICD (Institut Català de la Dona) through the V and VI Plan de Políticas de Dones del Govern de la Generalitat de Catalunya (years 2005-2011). Different activities have also been set through the CIRSO (Comisión Interdepartamental de Reinserción Social, Interdepartmental Commission of Social Re-integration) in which different departments of La Generalitat, the Autonomous Catalan Government, organisations and NGOs involved in assisting women plan the policies and the interventions relating to working with female inmates.

In short, and in the line of the furtherance that penal intervention policies related to women is receiving, **the project of the new penitentiary facility**, due to be inaugurated in 2011, located in Sant Llorenç d'Hortons (Barcelona), must be emphasised as being designed as a new and innovative penitentiary centre aimed at the female inmate population of Catalunya, and assumed to replace the current Women Penitentiary Centre in Barcelona. While waiting for this reality, regarding new penal equipment, to materialise, a remarkable effort has also been made in **re-organizing the assistance given to women within the Penitentiary Centre Brians 1**.

Thus, at the moment that the CPT paid its visit to Brians 1 Women Department, the enlargement and reorganisation of the assistance to female inmates in this penitentiary centre was already foreseen. Indeed, **since the beginning of February a new life unit named DONES II is available**, aimed at enlarging the residential supply of this centre which is, therefore, currently provided with two units, DONES-I and DONES-II, with an appropriate capacity of 316 places. Since June 1st 2008, the inmates distribution in the Centre Brians 1 amounted to 279 (193 in the Unit DONES-I and 86 in the Unit DONES-II). This enlargement and reorganisation of the life units in Brians 1 have allowed a very great improvement of the intervention developed upon the inmates within this penitentiary centre, allowing for the possibility to provide the inmates residing this centre with differentiated conditions.

The current distribution of inmates in the two life Units aimed at Brians 1 inmates is as follows:

- Women Unit I, with the following Departments: Closed regime, infirmary, entry ward and department, or unit, "U".

- Women Unit II, which has available the Department DAE (assistance specializing in drug-dependencies), Unit "A" (2 storeys), Unit "B" (1 storey) and Unit "C" (1 storey).

This new distribution has allowed to improve the quality of life of the inmates previously living in the Women Department, optimising internal classification in function of the evolution periods and of the treatment of the population under custody. As a result of this change, we have currently, in DONES-I, an entry ward or department that facilitates better intervention upon the residents, optimising the inmates acceptance in order to get a better classification in the unit or the department most suited to their needs. The opening of DONES-II has also generated a greater permeability re the classification of the inmates, fostering their location to be best differentiated in function of their behavioural development and of the treatment proposals aimed at specific targets (tackling drug-dependencies, long sentences, permits of leave, etc.).

With the opening of the DONES-II unit, it has been enabled a system of internal classification, based on the specificity of intervention, as well as in the inmates´ needs and problems. Meanwhile, the professional staff that assists the inmates can manage with greater effectiveness their requirements of assistance and intervention.

Section 101.

The CPT encourages the authorities to continue developing the useful activity range available for the inmates in the prison Brians 1.

Re this section, we point out that the programmed occupational training activities improvements are closely related to the demands in the labour market. In these activities both female and male inmates are involved, whether the training be given within the penal centre (in this case, in separate classrooms) or outside the centre, where co-ed courses are given. The range of occupational training, of productive or ludic activities, and of specific treatments is shared and organized according to the same criteria, needs and availability of means.

There is no gender-based differentiated supply of activities; it is, instead, owed to the needs issuing from the specialised practice involved in penal treatment. Of late, it has been opened a outside the prison a workshop which produces electronic components; 20 inmates go daily there, under the same conditions as the inmates from other penitentiary centres.

Section 102.

The CPT requests information on the opinions of the authorities regarding the effectiveness of the programme for women carried out by the unit against drug-dependencies (DAE) of the prison Brians 1, and about whether it would be possible to further such approach to other prisons.

Re this section, in which the CPT requests information on the effectiveness of the drug therapeutical deprivation programme started up in Brians 1 prison, it must be pointed out that this Intra-penitentiary Therapeutical Community, named DAE Brians-1 (Departamento de Atención Especializada, Specalised Attention Department) has moved its physical location in order to provide higher background quality to the women residing in this Department and to bring about, in the best possible way, a final positive result to their treatment. The new DAE location is the new Unit for female inmates in Brians 1 prison, the so-called DONES-II.

The general goal and philosophy underlying the DAE dynamics are twofold: on the one hand, succeeding in that the user keep abstinent from consuming addiction-generating substances; on the other hand, providing the users with due instruments and strategies, in order to allow them to carry out a healthier lifestyle, thanks to which the aforementioned abstinence could be consolidated.

Respecting the **DAE program efficiency**, it could be assessed through diverse parameters. One of them is the fact that the average yearly amount of users of such means (provided with 24 places) is 42, and the fact that there is a relevant entering this department is the object of a very relevant demand, from the inmates afflicted by the aforementioned problem.

We should add to this result the qualitative assessment carried out with the users, taking into account their satisfaction level due to their residing and being assisted within this therapeutical facility. All of them are aware that the fact of being able to be provided treatment in a ward of such characteristics is as "a price", a benefit having influence upon their life- and sentence-serving quality.

Moreover, at the present time no one doubts treatment programs within a therapeutical community regime to result in favourable outcomes as to promoting and maintaining drug-abstinence, and is an especial way upon the life quality improvement to the users residing in that kind of communities. National and international meta-analysis studies clearly show that, under appropriate application conditions, therapeutical community treatments succeed in favouring longer post-treatment time periods, as regards substance-consuming abstinence.

Therefore, not depending on the quantitative data herein stated, **qualitative assessment re user-satisfaction and related to the scientific evidence that intervention within therapeutical communities further abstinence lengthening, the efficacy of the Program DAE Brians 1 as a parameter aimed at decreasing criminal recidivism is proved**.

In order to verify and assess such a fact, use can be made of the two studies, published by Catalunya´s Center for Juridical Studies and Specialized Training, which corroborate the aforementioned thesis. Those studies provided an assessment upon male and female inmates having received treatment in the DAEs in Quatre Camins (male inmates) and Brians 1 (female inmates), and measured recidivism ratios at different time intervals. The results were highly conclusive, and showed the therapeutical community treatment in cases of drug-dependencies to decrease crime-recidivism from male or female inmates, such being especially the case if the program concludes with a positive evolution. The aforementioned recidivism ratio is assessed as being much lower if the intervention has been performed with female inmates (21,8%), as compared with 43,5% corresponding to male inmates. These studies allow us, thus, to establish the efficiency of the aforementioned intensive and integrated programs (DAEs), as relates recidivism lowering, at some 31 percent points, at least, when compared to the male and female inmates not undergoing any programs (an amount estimated as 73% of the cases).

Thus, when facing this prospect, the empirical justification as to the existence of DAEs for inmate population is an undeniable fact, if we wish to speak of the efficiency of an intervention both specialised and aimed at the rehabilitation and reintegration project with which we are entrusted.

To conclude the efficiency of this kind of therapeutical communities is fully asserted and is in **its course of spreading to other penitentiary centres**. Thus, in February of 2008, another DAE has been opened in the new Penitentiary Centre Brians 2 (for male inmates), with a total capacity of 54 places, and the new Juvenile Penitentiary Centre in Barcelona, the inauguration of which is deemed to be performed in October of 2008, which has a DAE Unit designed to hold 15 juvenile inmates.

Section 103

The CPT points out that the authorities must ensure for the women kept as inmates in the Girona Prison to be offered appropriate material resources, and to be accorded the ability to participate in beneficial activities.

Re this section, wherein the CPT points out for the Girona Prison the need to be availed material resources so that that the inmates be allowed to participate in useful activities, the Administration is well aware of the space location of Girona penitentiary Centre (even if it should be remarked that there are 4 cells, instead of 3, one of which being quite wide), so that, in order to fulfil that aim, **a new Centre** has been planned, able to hold 750 male and female inmates, to be located in the town of Figueres, 35 kilometres away from the current prison, the actual building of which will be soon started.

In the awaiting of this change to occur, work is in progress to lessen the current centre overcrowding, and in order to achieve it the inauguration of the new 2 Penitentiary Centres (more than 1000 places) during the last quarter of 2008 will be of great help.

Nevertheless, the activities are now conditioned by the scarce time spent by the female inmates within this Centre, a time lowered to that needed in order to proceed to the different judiciary formalities, after which they are quickly transferred into other centres. Therefore, taking that factor into account, several useful activities are allowed them, together with the assistance and the information taken in charge by the professional staff as son as they join the centre. To sum them up, these activities are as follows:

- Information on entrance: Mondays, Wednesdays and Fridays, 10 to 11:30 h.
- Law assistance information: Thursdays, 10 to 11:30h.
- Tutorship female inmates: Thursdays, 11:30 to 12h.
- Production workshops: daily, 9 to 13h
- Health education: Wednesdays, 18 to 19h.
- Arts and Painting: Tuesdays and Thursdays, 17 to 19h.
- Dress-making: Mondays, 16 to 18h.
- English: Mondays and Wednesdays, 16 to 18h.
- Attendance to Christian Services: Tuesdays, 16 to 18h.
- Attendance to Muslim Services: Wednesdays, 15:30 16 to 17h.
- Attendance to Christian Orthodox Services: Fridays, 16:30 to 19h.
- Courses in office computer software: Fridays, 16 to 18h
- Juridical assistance: Tuesdays, 16 to 18:30h.
- Psychological assistance to inmates suffering from AIDS: Tuesdays, 16 to 19h.
- Sports: Tuesdays and Fridays, from 12 to 13h (sports coach).
- Sports: Saturdays and Sundays, 12 to 13h, and 18 to 19h (voluntary sports pros).
- High School studies I: daily, 9 to 10:30h.
- Castilian Spanish as a Foreign Language: daily, 12 to 13h.
- Catalan as a Foreign Language: daily, 16 to 17h.
- Unitary schooling at all levels: daily, 10 to 11:30h.
- Psychological assistance: Wednesdays, 10 to 11:30h.
- Toxic addiction in the case of female inmates: Thursdays, 17 to 19h.
- Inter-cultural mediation: Mondays, Wednesdays and Thursdays, 9 to 11h.
- French: Tuesdays, 11 to 13h and Fridays, 9 to 11 h.

II.4.2 Health Assistance Services.

Section 105

The CPT recommends the Health Assistance Services of the penitentiary centres to carry out an active role re health promoting activities, acting at the same time than the corresponding authorities, should the need arise.

Regarding the active role that the CPT requires in its report re penal Health Assistance Services, it is true that the primary attention staff working in the penitentiary centres perform basically services related to social welfare, and services of health prevention and promotion, with no exclusive intervention in the fields of their due competence. This is due to the fact that the penitentiary institutions have moved from a stage in which they managed the supplies they needed, to a second stage, due to be developed in ten years, in which the management are transferred to the companies with which the penitentiary administration has signed a contract.

As a consequence, penitentiary health services carry out, being obliged by the General Penitentiary Law and its development Regulation, the follow-up of alimentary and environmental hygiene programmes of the meal-providing facilities of the centre, but always as an addition to the activities carried out by these companies, which are required to get the legally established sanitary supervision and control protocols. As an example, it is to be pointed out that companies providing the prisons food catering services have their own specialists in dietetics and nutrition, entrusted the elaboration of menus in certain amounts and quality, according to the type of population to which they are purported. Thus, **the active implication of penitentiary medical services is related to the co-ordination with these dietists, especially in the infirmary diets prescribed in the centre, kitchen and canteen supervision, together with the spot control of food manipulators, when preparing and distributing food products**.

The totally active implication of penitentiary health services takes place when countering the possible appearance of toxic food infections, in which they are the ones who manage all operations in view of assisting those affected, and carrying out the epidemiological studies intended to research the product bringing out the health problem. In this sense, they supervise that in every meal samples of each dish served in the centres are duly kept.

Finally, we must not forget that the supplies, as well as other environmental hygienic factors appertaining to the centre, are determined by other factors having to do with the economic, labour, social, cultural and environmental context, and also with structural factors, such are habits and behaviour, and behavioural factors. Therefore, there has to be a responsibility in order that, from all areas, health determiners are worked upon. As regards them part must be taken, first of all and in an especially active way, by the assigned community, which in our environment has not always got, unfortunately, the due care in preserving and maintaining these health affecting factors.

Section 106.

The CPT establishes that measures must be adopted in order to ensure that any sign of violence observed when a prisoner is subject to medical examination at the time of his entrance to the penitentiary centre is fully registered, this applying as well to any pertinent statement made by the inmate, together with the doctor´s conclusions (including the degree of coherence between the allegations made and the injuries observed); this information should be put at the disposal of the prisoner and its lawyer. Furthermore, the information should be brought before the competent legal regulatory body. The same approach should be followed every time an inmate is subject to medical examination, after an episode of violence occurs in prison.

Re this point, we refer to what has already been stated in the answer to section 84 of the CPT report.

Section 107

The CPT recommends that measures be adopted in order to remedy the loopholes of the data integrated into the computer-held medical files.

Re this point, within which the CPT issues the recommendation that the computer held medical records of the inmates should pick every medical activity in the assumptions of immobilisation or injuries, as during the CPT´s visit the absence of certain basic data were detected, as, where were carried out the examinations, which professional was the one involved, and the lack of statistics on pathologies or injuries in prison.

The visit granted to injured inmates is carried out in the medical doctor's office or in the centre urgency ward, and the doctor assisting the injured person, if there is no computer error at the time of the medical examination, records the whole information in the forms of the follow-up of computer filed clinical history, a system identifying with a code-number what professional lent the inmate his assistance. The information relating to the inmates having undergone immobilization follows the same system. In fact, a copy of this report is not systematically sent to the inmate´s lawyer; but whenever the assisted person requests it, a copy is issued to him, so that it might use it in whatever ways he deems suitable, annexing it to a document addressed to the court, or supplying the information therein to his family or his legal representative.

Re the fact that there is no available statistics on pathologies or injuries, we wish to give the CPT evidence as to the existence thereof, such a document having been recently improved by means of computer resources. In this sense, and, during the last years, computerised clinical files have got specific sections to record recent and cumulatory diagnoses, together with the assistance or the medical examinations in case of injuries.

II.4.2. VI Other matters

Discipline

Section 110.

The CPT urges every disciplinary sanction to be governed in accordance with the proportionality principle, and to be imposed with a total fulfilment of the due formal procedures. Furthermore, the prisoners never should be punished for having issued a complaint.

Re the recommendation issued by the CPT to the civil servants of Quatre Camins and Brians 1 prisons, which consists in the fact that disciplinary sanctions be imposed according to the proportionality principle and respecting all formal guarantees, without being meted out owing to the mere formulation of complaints, it is necessary to issue the following considerations:

1 – Re the **Penitentiary Centre of Quatre Camins**:

The CPT report indicates that some inmates stated that they could not meet the magistrate investigating their disciplinary dossiers, to issue their own opinion before the meeting of the Board. It states, likewise, that there were inmates that had been sanctioned with more than 12 days punishments, owing to their having insulted some of the prison staff members.

It is necessary to report that the procedure of disciplinary dossiers is regulated by what is established in the 10th Title of the Penal Regulations, which establishes that it is **inexcusable** for the instructing magistrate to meet the inmate and gather his allegations in a minute to be annexed to the dossier, with signature of the inmate besides that of the investigating magistrate. Should it not be done so, the dossier is considered having null value, and the Court of Penal Control would cancel all penalty sanctions having this clear defect of form. **Such a case has never occurred within this centre, and all sanctioned inmates have undergone the regulatory procedure of the sanctioning procedure, enjoying every guarantee stipulated in the rules and the consequent monitoring of the Judge responsible for the execution of sentences**.

Re the assessment of the sanctions imposed to an inmate for behaviour requiring disciplinary sanction, it is necessary to indicate that this assessment is performed by the Disciplinary Commission, and not by the Treatment Board as stated by the CPT in its report, in section 109. It is likewise necessary to specify that, when sanctioning, the Penal Regulation sets proportionality and limitation criteria in the types of sanctions, indicating to what type of misbehaviour each type of sanction corresponds and, besides this, the Disciplinary Commission of this centre has set **a table of proportionality criteria to impose sanctions**, wherein it can be shown that for insulting the staff members the sanction to apply, should there be aggressiveness, is a maximum of 3 days in isolation, and, should there not be aggressiveness, of a maximum of 10 days of deprivation of walking exercise and of recreational acts. To enable the checking of these effects, a copy of that table is enclosed in the Annex 25.

2 – Re the **penitentiary centre of Brians 1.**

There is no difference with what is aforementioned in the case of the centre of Quatre Camins, that is to say, **the inmates are in no case sanctioned for issuing or lodging complaints**. The investigating magistrate is in charge of notifying the precautionary measure agreement in all the cases, and the procedure is recorded in the prescriptive document, as well as the allegations made by the inmate, or his wish not to allege, this document being signed by the selfsame person involved.

Re the sanctioning action, it is scrupulously applied as established by the regulatory framework provided by the Spanish Constitution (section 2 of Article 25) and the whole of applicable legislative measures. Therefore, no element of the process is countered in any case, in order not to limit any of the rights of the inmates that are undergoing sanctioning procedures (from the beginning, the investigation, (charge and discharge forms), hearing, resolution proposal, final resolution and notification, as well as the right to file an appeal before the Judge responsible for the execution of sentences.

Section 111.

The CPT requires the measures necessary to improve the material conditions of the isolation cells in the prison of Quatre Camins to be adopted.

Re this point, the department nº 5 of the centre is reported to have two storeys of cells, separated by a grate provided with a door. On the lower storey cells intended to implement isolation sanctions are found. The first storey is dedicated to locate the inmates wishing to receive the protection system established by the Article 75 of the Penal Regulation. In theory, these cells were foreseen for individual use, but owing to inmate relocation needs, the cells in the first storey have become occupied by two inmates.

In order to improve the situation of these cells, a maintenance and flaw-reparation system has been implemented, and activities have been proceeded to in the whole department as regards cleaning, painting and reparation of the possible flaws that might have been located. **As of current date, the department is in fully correct conditions as regards habitability**.

With respect to the separation between the lavatory and the remaining of the cell, in all the cells of the first storey, that is to say, those occupied by two inmates, it has been proceeded to settle opaque separation curtains, guaranteeing that each inmate may go to the cell lavatory, without being in view of the other inmate.

Inmates imprisoned under protection regime

Section 113.

The CPT recommends the authorities to adopt the necessary measures in order to improve the imprisonment conditions and the system, as well as the treatment, offered to the inmates under protection regime in the prison of Quatre Camins.

The report of the CPT shows that it considers as essential for prisoners under custody to be availed appropriate conditions of treatment, and to be granted access to activities, training courses and sports. It states, likewise, that there was an inmate with suicidal tendencies living together with another, elder, inmate, who did not want to involve himself with the prison system. Those two inmates were in charge of one another, and the CPT considers this fact to be an abdication of responsibility from the authorities of the prison, with respect to the welfare of these inmates under custody.

Re this consideration, it is needed to report that the inmates being under application of the Article 75, are so, in their immense majority, by their own request, because of their having problems of conflict with other inmates, due mainly to debts arising from drug purchase or to conflicts external to prison conditions. These inmates have very serious problems to be able to coexist, as much among themselves as among the other centre inmates, and carrying out any activities in common proves therefore to be highly difficult. In fact, many of them avoid being related even to other inmates sharing their same situation.

In this module nº 5 where the inmates submitted to the Article 75 are located, the doctor makes daily visits and, in case of detecting an inmate suffering from problems that he deems of psychiatric origin, passes the information to the psychiatrist of the centre, who visits the inmate and, if necessary, has the inmate sent to the psychiatry service. Likewise, the treatment team, made up of a psychologist and a jurist, perform a specialised study of each inmate, usually on the latter´s request or after the assessment of the professionals of the module, who notify unusual behaviours.

Re the availability of sport and training activities, the module is provided with three yards, where these inmates can play paddle or football, with the clear agreement that, in order to preserve their own safety, their getting out to the yards is performed in small groups.
They can also study in their cells, and have available the books that they are sent from the central library. However, in order again to preserve their safety, they are not allowed to go out of the department, to have access to common activities or training courses.

Finally, regarding the fact of inmate coexisting in a cell and taking care of each other, we do not share the views of the Committee, who considers that fact as an abdication of responsibility incurred by the penal centre. On the contrary, the medical service or the treatment staff who, as we insist, carry out a specialised and ongoing follow-up of the inmates, may consider inappropriate for an inmate to live alone, since he may suffer from some kind of health or depression problem, or from any other type of problem that is not serious enough as to enforce direct action upon the inmate. The problem could show that it is suitable for him to live with another inmate, allowing him to feel better; these are the cases where coexistence is looked for, with another inmate sharing a close relationship with him, **without no implication that these inmates would at any moment cease being under follow-up by the treatment or medical staff who evaluate the measure**, so that, should any problem be detected, they would act upon the inmate in the area necessary to him, and have him enter the psychiatric service or undergo the appropriate treatment.

Problems of staff

Section 115.

The CPT recommends the authorities to ensure that the whole prison staff, the one just recruited as well as the one with experience of service, be provided by the training and the knowledge necessary to carry out their tasks with professional competence.

Training constitutes in all fields, and in that of Prisons in a clearer way, owing to the special characteristics of the matter, the need to have a permanent and specialised relationship with the inmate, attending to his needs, watching his health condition, his personal development, the activities performed… Therefore, the Training Planning is a strategic tool acting as a utility for value transferring, and to pass through the principles and the aim of the organisation in order to secure its entrusted mission, to update professional practices and to align them with every best practice within the social environment, to offer effective access to new forms of effective intervention based on research and on national and international knowledge, and to provide the staff with tools aimed at personal and professional growth.

In the training field currently applied in the Centres to which the report in this section refers, the difference could be made between:

1 Initial Training.

This training is aimed at the Body of Specialist Technicians and at the Body of Technical Assistants, in their pools affected by internal promotion as well as in their general job pool. All along 2007, a total of 25 activities and a total of 4.346 hours of selective initial training were performed, after which 604 pupils were accepted. In 2008, a total of 25 activities have been programmed, with 2.275 hours and 345 offered positions.

2 Ongoing training.

In 2007, the Centre for Legal Studies and for Specialised Training of Catalunya developed 82 ongoing training courses aimed at the staff having passed the Social and Criminological Training programme, with a total of 1.400 positions. In 2008, and within the Social and Criminological Training Programme, 95 courses with a total of 2.233 positions have been programmed.

This training includes activities related to the ongoing staff training, training related to improvement projects, delinquency analysis, rehabilitation programmes, strategies aimed at improving safety, tools for improving management, and alternative measures to imprisonment. Formative activities, both with required personal presence or “on-line”, are also included.

So, in 2007 a total of 2.004 training places have been offered, and, in 2008 2.578 places have been offered.

Together with the aforementioned Centre of Studies, Catalunya provides another training aimed at the staff of the areas of administrative assistance, a training performed by the School of Civil Servants of Catalunya, which also gives courses in management training and assistance.

Reports and penitentiary surveillance

Section 116.

The CPT recommends the authorities to ensure that the prisoners receive an acknowledgment of receipt in writing of each report that they would issue, either addressed to the director of the establishment or to the judge responsible for the execution of sentences, as well as that they receive an answer, whether positive or negative.

As already displayed elsewhere in this report, the Spanish penal legislation establishes that all the inmates have the right to submit, either verbally or in writing, their requests, complaints and appeals before the penal Administration or before the Authorities, Organisations and Institutions with competence to investigate and resolve upon them. The inmates should be able to issue them, if the person involves prefers to do so, in a closed envelope, which will be delivered with due acknowledgment of receipt.

The requests and complaints formulated by the inmates will be entered in their personal files, and the resolutions that are issued regarding them will be notified in writing to those persons involved, with an explanation of the appropriate appeals to be lodged, the deadlines before which lodging the appeals and the bodies to which the appeals should be lodged.

The inmates can, likewise, send their requests and complaints to the Ombudsman or to his counterpart in Catalunya, the Síndic of Greuges. These requests and complaints may not be subject to any censorship whatsoever.

Regardless of what has been earlier stated, the inmates can also formulate their requests or complaints in a direct way, or lodge their appeals before the judge responsible for the execution of sentences in the assumptions referred to in the Article 76 of the Penal General Law.

In practice, when the written document of complaint or the appeal is brought to any of the Registrar´s offices of the Penal Administration, the inmate or his representative is delivered a simple copy, dated and stamped. Moreover, the document is sent without undue delay, and in any case within a maximum period of 3 days, to the corresponding Judge responsible for the execution of sentences.

Section 117.

The CPT recommends the authorities to review the performance of the current system of reports and inspections proceeded to by the Judges responsible for the execution of sentences, to ensure that it guarantees effectively the rights of the inmates.

Likewise, it urges the authorities to introduce other independent supervisory mechanisms, authorized to carry out regular visits to the prisons in order to gather the inmates´complaints and, should the need arise – take due measures.

Foreign citizens

Section 118.

The CPT recommends the authorities that they adopt the necessary measures in order to provide help to the foreigners that enter in the Catalan penal system.

Being aware of the increasingly multinational reality that is a character of the penal population, we are carrying out a set of activities aimed at taking care of the needs of the foreign population, specifically the linguistic needs.

On the one hand, to take care of the immediate linguistic difficulties of the inmates, several initiatives have been organised, such as **delivering informative materials regarding the working regulations of the penal centres, translated into different languages, the assistance of translation facilities in interviews** among professionals and inmates, should it be required (in all the centres, by the mediators), **and a service of specialised translation within the Penal Centre of Figueres**.

Likewise, in order to provide a medium-term response to linguistic needs, there are **Castilian and Catalan language courses** organised in the penal centres of Catalunya, which were attended during the last month of May by a total amount of 670 inmates (Castilian language) and 453 inmates (Catalan language).

On the other hand, to promote the integration of the inmates of foreign origin into socio-educational activities and to try that the language be not an impediment, the centres have several resources, among which are found **intercultural mediators**, through whom participation in socio-educational activities is promoted and facilitated; entry or welcome programmes have been also started up, in order to give due orientation and stimulation to the participation of inmates in the programmes of their treatment area; cultural diversity programmes promote the relationship among people issuing from different cultures, and provide computer settings in order to writing in Arabic.

Likewise, and strictly according to the inmates´ wishes, the relationship is promoted with the consular representatives of the countries of origin of the inmates, in order for them to be lent assistance by the aforementioned representatives.

Involvement inmates in identity parades

Section 119.

Re the motives to involve inmates in identity parades (and whether they receive any remuneration, and the way to proceed to their being sorted out), and also whether staff members are also invited to take part in such identity parades.

A video-conference system is used basically for the communication of inmates with the Síndic of Greuges, by express request of the latter. Among others possible uses, we find those derived from the compulsory collaboration with the Administration of Justice. Since the introduction of this service in 2004, 8 identity parades have been carried out, by request of the Courts in Rubí, El Vendrell, Tudela and El Prat de Llobregat.

The procedure followed when carrying out any identification parade (those with personal attendance, or the 8 carried out through video-conference means) is as follows:

a) The inmate that must participate in an identity parade submits as a proposal a list of other inmates, who must give their consent to take part.

b) This information, together with the list of participants, is transferred to the legal body which issues the individual citations, indicating the date and the time for the judicial proceeding of the identity parade to be carried out. Therefore, the penal action falls within the area of its collaboration with judicial formalities in which respects:

- Issuing the inmate proposals.
- Sending a legal notification to the inmates wilfully attending.
- Proceeding to the temporary cession of the videoconference technical facilities, at the date and time agreed.

In conclusion, and to answer the questions issued by the Committee, it must be indicated that:

- **The inmates are selected by the inmate whom the court submits to an identity parade.**
- **The acceptance is voluntary, and does not imply any kind of remuneration.**
- **The centre staff is not invited to take part in identity parades.**

III.4.3 Referring to the penitentiary centres under the authority of the Spanish Ministry of the Interior

III.4.3 Ill-treatment.

Section 121.

The CPT points out that the competent authorities are to send an unequivocal message to the staff entrusted to custody in the prison of Nanclares de Oca – proceeding to regular reiterations – stating that every kind of mistreatment aimed at the inmates are not acceptable, and will constitute a basis leading to serious sanctions.

The penal Administration has among its duties, as established by the section fourth of Article 3 of the Penal General Law, "to look after the life, the integrity and the health of the inmates". This duty, a statement upon the right to life and integrity recognised in the Article 15 of the Spanish Constitution, is formulated in very different ways in the penal management, one of which being for this right to be acknowledged in the course of the activities performed by its civil servants. **Therefore, the Spanish Administration, as a whole, and, within it, the penal one, keeps a policy of zero tolerance towards any action that might imply tortures, mistreatment or degrading treatments that might be undergone by the inmates, through the acts of civil servants, something that leads to the preventive aspects of this type of behaviour, as well as to disciplinary or of penal pursuit, should this behaviour manage to be detected**.

However, and as a proof of the aforementioned zero tolerance, the Secretary General for Penitentiary Establishments of the Ministry of the Interior has already reiterated its point of view, following the recommendations pointed by the CPT in this matter, to the Penal Centre of Nanclares de Oca, requesting, in any case, the inexcusable proportionality principle application to be fully carried out.

III.4.3 b *Coercive Means.*

Section 128.

The CPT recommends the Spanish authorities to adopt an integrated regulation approach to the immobilisation means in all penitentiary institutions of Spain wherein it is applied, taking into account the minimum regulations and the principles stated in section 91.

The regulation of the immobilisation recourse was already carried out in December of last year, precisely just following a verbal suggestion issued by the CPT during its visit. The regulation is performed through the Instruction 18/2007, enclosed to this report as Annex 23.

In a particular way, the aforementioned Instruction regulates mechanical restraint in accordance with the criterion of the selfsame CPT, and duly discriminates the restraint owing to disciplinary reasons from that owing to some medical reason. In the first case, the presence of the doctor is solely required in order to determine the existence of possible injuries or medical contraindications, as in other situations of disciplinary intervention.

III.4.3 c *Inmates in custody in special segregation units and departments.*

Section 130.

The CPT recommends remedy to be brought to the defects mentioned in the sections 129 and 130, re material conditions in the special departments and the isolation units of the establishments visited.

The requests submitted by the Economic Boards of the three Centres are analyzed in the report (San Sebastian, Nanclares of Oca and Madrid V) during the financial year 2007 and related to **the field of internal equipment expenditure**, which is mostly intended to supply unit rooms of units, were taken care of on a 99%, being the 1% remains left to the financial year 2008.

In **San Sebastian Penitentiary Centre**, the isolation department, comprising 10 cells, is almost always empty, as there are no first degree inmates, and there are solely intended to hold the inmates covered by the cases stated in the Articles 72, 75 and also to serve, occasionally, isolation sanctions in a cell. The furniture in that department consists of a bed frame with its spring base, a table and a stool, all of them fixed to the floor, owing to safety reasons, a masonry cupboard, a toilet and a lout-proof washbasin, and a double lock on the doors. It has been painted of late, and this financial year has budget entries to replace the washbasins and toilets, while metallic framed and double paned windows have already been installed.

During this year, they will be provided with central heating and TV aerial plugs (works already carried out in the rest of the Centre).

In the **Penitentiary Centre of Nanclares de Oca**, owing to safety reasons, the isolation cells are only provided with a bed fixed to the floor, while the rest of the department cells of the department have all the furniture: a bed, a table, one or two chairs and a masonry bookcase. All the tables and chairs are new, since they were received at the end of the 2007, and installed this year.

Regarding **Madrid V**, the report itself states them to be suitably equipped.

In the three Centres, and in order to carry out to Instruction relating to Mechanical Immobilisation, each of the cells is provided with has an articulated joints bed anchored to the floor.

Section 135.

The CPT recommends the Spanish authorities not to grudge any efforts in order to development the regime activities offered to all prisoners accommodated in a special department.

As respects the report on the situation of the isolation departments and the special life system units in the penitentiary centres of Nanclares de Oca, San Sebastian and Madrid V, it is necessary to specify that the two first Centres do not have closed system departments, **but disciplinary system departments in order serve sanctions**; thus, only the penitentiary centre Madrid V has a special life department to apply closed system imprisonment and, therefore, an Intervention Programme aimed at the inmates stipulated in the sections 2 and 3 of the Article 91 of the Penal Regulation, and in the Article 10 of the General Penal Law, those being covered by the first paragraph of Article 72 and the paragraphs 1 and 2 the Article 75 of the Regulation being excluded, given the scarcity or transitory character of these situations.

With a general nature, the Closed System Intervention Programme has as an overall target to adjust and integrate the individual into the ordinary system, and as a specific aim to further the inmate´s habits of hygiene, cleanliness and order, to promote his participation in activities, and to promote his positive behaviour in order to adjust himself to the ordinary system.

Human resources are integrated in a Technical Staff having multi-disciplinary nature, and who profits from the participation of the civil servants entrusted with warden functions, on usual shifts within these modules or dependencies.

Priority activities of the Programme will be therapeutical, educational and sports-related, while the rest of the activities are additional in their nature – occupational workshops, cultural activities, productive workshops wherever deemed possible, etc.

In order to develop this Programme it is deemed essential to promote:

- **Tutorial trusteeships**, as each member of the multidisciplinary Technical Staff answers for one or several inmates of those integrated in the programme. This direct relation furthers personal relationship and alleviates the anxiety conditions common in a closed system, and the usual alienation felt by these inmates toward the penitentiary professionals.

- **The strengthening**, being rewards for the inmates after carrying out the entrusted activities, and consisting of extra communication availability, telephone cards, books, etc.

As a performance criterion, whenever an inmate included in the Programme is sanctioned with the deprivation of exercise strolls and recreational activities or with serving his week-ends in a cell, he does not cease to attend any of the activities considered for him as having priority. Whenever, applying the Article 108 or the Article 109 of the Penal Regulation, he is sanctioned with a period of days to be served in an isolation cell, he ceases to attend all the programme activities while the isolation lasts, the exception being therapeutical activities, as it is precisely this circumstance that causes them to be mostly needed.

At present, the Closed System Intervention Programme is established in 22 penitentiary centres, with a participation of 480 inmates.

The penitentiary centre **Madrid V** is supplied with an Intervention Programme in which take part an educator, a sports coach, a master and an occupational monitor. It consists in sports activities (four times a week), educational activities (four times a week), computer training workshop (once a week), occupational workshop (three times a week), religious and social values activities (once a week), and therapeutical activities from Monday to Friday. The latter activity was in charge of a under contract through a labour insertion programme financed by the INEM, and that psychologist had her contract finished in March 2008. According to the information supplied by the centre, this activity is going to be in charge of a psychologist of the centre.

The Penitentiary Administration is highly interested and fully committed in caring for the needs expressed by those inmates found in special system departments. This attention is paid at different moments:

On one hand, there are the penitentiary centres to which the closed system programme designed in 2005 applies. The implementation of this programme has very often needed making improvements and architectural adjustments, mostly aimed at granting space in order to carry out activities. This must needs concur with maintaining due safety and protection measures for professionals and inmates. It has implied very relevant effort. Modules and units have been very often visited and inspected, in order to carry out an ongoing assessment of these departments performance.

This assessment leads us to state that the whole of the establishments provided with this kind of departments are carrying out some type of activity in which the inmates participate.

Not all penitentiary centres can be provided with closed system programmes, owing mostly to the scarcity of human resources in the treatment staff. Nevertheless, this lack of application of the full programme is replaced with carrying out both therapeutical but also occupational activities; or as is the case in some penitentiary centres, with the practice of sports activities in the centre facilities that are used by all the inmates, especially the attendance to the establishment swimming pool.

In any case, the target to be reached is for all of them to complete in full the intervention framework program.

Section 136.

The CPT recommends that efforts be made to improve the relationship quality among the inmates and the prison staff, in the special departments.

The Penitentiary Administration takes into high account the quality of the personal relationship between the civil service staff and the inmates. The Penal Rules, **specifically the Instruction 9/2007 on the classification and destination of the convicts, the closed and the open system, urges the civil servants acting as wardens and the treatment staff to establish a frequent professional relationship** that is shaped at several moments**; when joining the department**, which draws the personnel of the Technical Staff **to entering into interviews and preparing reports**, in order to prepare the Personalised Treatment Programme (Programa Individualizado de Tratamiento – PIT), wherein there shall be entered all the activities to be carried out by the inmate, in order to develop himself in a personal, social and familiar way. Interviews with the inmates will have to be going on, as the inmates are progressing as respects the improvement of their personal situation.

Another way to improve the personal relation among the penitentiary civil service staff and the inmates is **to integrate the civil servants acting as wardens in the decision-making process of the benefits to the inmates**, so that the latter be motivated in their relationship by being aware of the civil servant involvement in the Treatment Boards wherein decisions are taken relating to modality changes in their special system, or relating to the application of penitentiary benefits. This aspect is stated in the rules of the aforementioned instruction, and is based on the persuasion that the civil servants working in special system units must know, through their own relationships with them, the inmates of the department.

Therefore, adopting measures in this matter is something clearly stated, and so is the interest of the Administration in furthering and starting up the measures that should further the aforementioned relationship, making use, in order to do so, instruments as the aforementioned Instruction.

Section 137.

The CPT recommends the inmates to be involved in the review proceedings relating to their transfer into a special department. An agreement has to be reached as to the clearly defined aims and goals allowing reclassifying the inmate, in order for the latter to be returned to an ordinary system.

In response to the CPT recommendation in this matter, it must be pointed out that **the Spanish Penal Administration foresees the inmates´ involvement in the intervention process to which they are submitted.** This applies not only in the procedures for degree classification, for classification revisions, for the concession or denial of leaves but, above all, in the of treatment and intervention process to manage the compliance with the Personalized Treatment Programme (PIT).

The PIT document is made of three parts. The first part corresponds to the analysis of the lacks, needs, and interests that the inmate shows, and consists of a joint analysis of these problems, performed by inmate and the educator. The second part establishes specific aims to be attained by the inmate, assisted in control and supervision by the educator (for example: improving his educational level, learning a profession, to acquiring labour habits, etc....). Finally, the third part consists of designing activities with the realization of which the inmates might attain their set targets. It is, furthermore, emphasised that in all this process the inmate has to be accompanied by the educator.

This method is used for all inmates residing in a penitentiary centre, which means that the ordinary system inmate is applied the same consideration as the one subject to closed regime.

Section 138.

The CPT points out that there is the need to adopt, for those inmates under protection, the measures needed to improve their imprisonment conditions and the system they are offered.

Art. 75 of the Penal Regulation regulates the limitations that can be imposed on the inmates owing to safety and good establishment order needs, taking into account two different situations: the first one is regulated in section 1, referring to regulatory limitations generated by facts being especially serious, and that could lead to disrupting the order within the establishment; the second one, regulated in section 2, refers to the inmate self-protection system, in view of possible conflicts with the rest of the other ones.

The regulation of these situations has been established, in a general way, in the **Instruction 6/2006, a part of which is adjoined to this report, in Annex 24**.

As might be deduced from it, **the self-protection regime** – as stipulated in section 2 of the Article 75 of the Penal Regulation – **is characterised by its exceptional nature, the limitation of the time duration, compatibility with other activities, the special psychological follow-up and the control by a legal authority. Also, the regime limitations considered in the section 1 of Article 75 have exceptional nature** ("whenever other alternatives less hard for the inmate be dismissed") and considers compatibility with other activities.

It is, however, true that the centres of Nanclares de Oca and San Sebastian are old prisons with problems of availability re common spaces and recreational areas. Thus, it is not occasionally feasible to make available a supply of activities suitable to inmates submitted to the regime of section 1 of the aforementioned article and therefore, in this case it means promoting that the measure lasts the least possible time, or fostering the transfer to another centre.

Section 139.

The CPT recommends that measures should be taken, to ensure that inmates submitted to disciplinary sanctions do not share the same department as the inmates submitted to closed regime classification within a special department.

Among the 66 penitentiary centres which are dependent on the General Administration of the State, 23 have got closed system Departments.

It is necessary to start from the statement that, in the oldest penal infrastructures – among which are the two centres of the Basque Country visited – only isolation Departments are available.

The Spanish Penal Administration is aware that these Departments lack necessary conditions enabling a prolonged isolation system, as is the closed system, to be complied with under dignity conditions allowing for spaces of intervention, and, thus, closed system inmates are not assigned these Departments. Those remaining therein are in transit, to be transferred to other establishments.

Given the very low percentage of the penitentiary population classified as in closed system – 1.6% of the total population – it is not possible, due to effectiveness criteria, to have closed system infrastructures in all penitentiary institutions. The administrative criterion in this matter has been to create special departments as the penitentiary infrastructures have been renewed, in such a way that, at least, almost all Autonomous Communities might have closed system departments. At the moment, it has not yet been possible to have this type of infrastructures in the Basque Country, in Murcia, or in Castilla-La Mancha.

Despite what is earlier pointed out, and respecting, in short, the situation of these infrastructures in the Basque Country, it is necessary to indicate that, at present, a Writing-off and Centre Building Plan is available. It has its completion horizon in 2012, within which it is foreseen to renew and update its penal infrastructures, allowing the provision of some Department for the fulfilment of closed regime stay.

III.4.3 d Inmates included in "FIES".

Section 140.

The CPT requests information with respect to the criteria for applied systems, and the eligibility for certain sentencing options, of those people included in the "FIES" file. Furthermore, the Committee would like to know what are the "typical characteristics of a group of inmates or an organisation" that could establish "personal circumstances that require measures implying limitations of the inmates rights or setting differences within the system". It also requests to be provided with a copy of appendices 2 to 4 of the "FIES" instructions.

Re the criteria for the systems applied to those people included in the "FIES" file, it is pointed out that including an inmate in that file does not entail the application of any type of life system; i.e., **no prisoner or convict can be assigned a special department or closed system unit by the sole fact of having been included in the file. This is positively stated in the Instruction 6/2006 of the Directorate-General of Penal Institutions and may be deducted from the sole defining target of the "FIES" file, which is only that of gathering information of use for prevention cases, and to obtain it in accordance with the laws and the regulations**. As is expressed in the aforementioned Instruction:

"The File of Inmates submitted to Special Follow-up (Fichero de Internos de Especial Seguimiento – FIES) is a database created owing to the need of having available full information about certain groups of inmates classified as highly dangerous – due to the seriousness of their offence record or to their penal course –, or in need of special protection. The data stored relate to their penal, procedural and penal situation, and are, therefore, considered an annex of their penal personal dossier or protocol, guaranteeing and ensuring fast location of any fact without prejudging, in any case, the inmate classification of the inmates, hindering his right to receiving treatment, or implying the determination of a life system different from that which had been regulatorily determined".

Consequently, the only measures established respecting all the inmates included in the file, by the sole fact of that inclusion, are those stipulated with an overall nature by the Penal Regulation, whatever the life system assigned to the inmates:

"To perform the follow-up that is aimed at, surveillance, information and other safety measures foreseen in the Article 65 of the Penal Regulation will be intensified – re counting, searches, frisking, requisitioning, confiscation of forbidden or dangerous items – always with the respect due to the dignity and the fundamental rights and in accordance with the principles of necessity and proportionality".

As a conclusion, the different types of penitentiary regime or life – closed, ordinary and open – are applied to each one of the prisoners or convicts in accordance with the criteria established in the Penal General Law and the Regulation thereof, without having anything to do re the inclusion or non inclusion in the "FIES" file.

Thus, for closed system, the Article 10 of the law requires a statement of the reasons on which is based the ruling that extreme danger or manifest non-adaptation is appreciated, and the Regulation, in the section 5 of its Article 102, gives objective expression to that qualification considering factors such as: violence or seriousness of the offences committed, involvement in criminal organizations or armed gangs, participation in riots, aggressions, very serious or serious law infringements in a repeated way, etc. Is true that such factors with be very often found among inmates included in

some other collectives of the file (direct control, armed gangs, organized crime), although but not in other ones. Therefore, of a total amount of 1542 inmates so far included in the "FIES" file, they are 595 ones in closed system.

Likewise, and re the penitentiary centres visited, the distribution as relates to the assigned system of life of the inmates of the file is as follows:

CENTRE	REG. CLOSED	REG. ORDINARY	REG. OPENED
SAN SEBASTIAN	1	6	5
NANCLARES	-	21	1
MADRID V	7	71	-

Re with what the CPT report states about its comments re the location in the closed system department (unit 15) in the penal centre Madrid V of inmates included in the file owing to the sole fact of appearing in the latter, a revision has been carried out on the data sheets in this Direction Department and those in the partial department occupation sheets of the centre, as related to the days where the visit took place. All the inmates that during those days were found there, and appeared as included in the FIES file, were under the application of the closed system or regimental limitations agreed by the Director of the centre, in accordance with what is set in the Article 75 of the Penal Regulation.

Re the request issued by the CPT, on the same report section, of a copy of Appendices 2 to 4 of the "FIES" instructions, the requested copy in adjoined to this report as Annex 26.

III.4.3 e Health Assistance Services

Section 142.

The CPT recommends reviewing the health staff in the prison of San Sebastian, to ensure 24-hour attendance by the infirmary staff.

The Penitentiary Centre of San Sebastian is a small establishment located in an urban centre whose staff is, therefore, deemed adequate. Furthermore, the latter lends presence assistance 14 hours a day, and provides on-call night service. This service ensures responding to any eventuality within not a greater deadline than the one expected by any free citizen. There are, furthermore hope, possibilities of fast evacuation in view, when facing any situation that would require it.

As a consequence, it is not, so far, considered necessary to review and increase the Health Assistance staff of the penitentiary centre of San Sebastian, or to introduce ward service requiring full permanence from the staff.

Section 143.

The CPT recommends the Spanish authorities to adopt the measures necessary to ensure that medical examinations of the inmates of special departments or isolation units be carried out far from hearing and – unless the doctor involved expressly requests otherwise, in certain cases – far from the sight of the non medical staff. Furthermore, the prisoners should not be handcuffed while they undergo the medical examinations.

The Penal Administration takes care, in a general way, of the need for confidentiality of the doctor – patient relationship. In theory, the civil servants on watch are solely present in specific situations, and only under the request of the doctor or the nurse. Medical explorations of handcuffed inmates occur, likewise, under exceptional conditions.

Section 144.

The CPT recommends the authorities to review the procedure of medical examination at the time of the entering the penitentiary system, in order to include a standardised entry form whether the inmates suffer from injuries on getting into prison. It must especially be entered in full any sign of violence observed in the medical examination undergone by the entering inmate, together with any pertinent declaration of the prisoner, and the doctor´s inferences (including the consistency between the allegations made and the injuries observed); this information should be made available to the inmate and to his lawyer. Furthermore, the information should be brought before the competent judge responsible for the execution of sentences. The same approach should also be followed whenever an inmate undergoes medical examination, after any episode of violence within the prison.

The medical examination carried out on while entering the penitentiary centre includes two differentiated parts. The first one is carried out at a moment as near as possible to the incoming, never more than 24 hours later, the aim of which is to detect the existence of injuries or of relevant pathologies which need early treatment. In the following days, a more exhaustive examination is performed wherein, if necessary, additional tests are usually requested.

The injuries that might eventually be detected, in the terms referred to by the CPT, are already written down in an official report sent to the legal authority. Copies of that report are likewise delivered the management of the centre and to the main interested party, the last one being kept within his individual clinical report.

Therefore, there is a documentary certificate and a procedure allowing to detect and bring under legal authority monitoring the possible mistreatment inflicted to the inmates by law enforcement officers, during the formers´ custody period, previous to the inmates´ entry in prison.

However, the Ministry of the Interior, in order to increase the existing guarantees and carry out the CPT recommendation, will start the necessary steps to create the centralised file suggested by the CPT.

Section 145.

The assignment of prison doctors must be reviewed, re disciplinary matters.

The provisions of the Article 254 of the Penal Regulation, stating that sanctions of in-cell isolation be served after the prior report and examination performed by the penal institution doctor are addressed, as stated in the European Penal Rules, **not to the disciplinary measure approval by the doctor, as it is suggested in the CPT report, but to guarantee that such a measure cannot be initially imposed, nor its application be continued, in those cases wherein**

physical or psychological health reasons make it unadvisable. Precisely as health professionals are, first of all, guarantors of the health and the welfare of the inmates, they cannot be prevented from issuing a report, in strictly medical terms, on the consequences that such a measure implies as to the inmates´ health.

This purpose is highly obviously shown in the rest of the article aforementioned, when it is pointed out that in the case of having to serve the sanction, the Director of the centre will be informed on the need to cancel or amend the sanction imposed owing to health-related motives, or on the need to postpone the in-cell isolation sanction enforcement and serving, in the case of sick inmates.

On the other hand, and re the standards established by the European Penal Rules, it is necessary to point out that the Spanish legislation assigns a doctor, and not an infirmary professional, the follow-up of the sanctioned inmates´ health welfare.

III.4.3 f Responsibility for the execution of sentences

Section 146.

The CPT recommends the Spanish authorities ensure the judges responsible for the execution of sentences to be motivated to visit all penitentiary facilities, in the performance of their duties, and to contact the inmates as much as the prison staff.

In Spain, it has to be remembered that the CGPJ (Consejo General del Poder Judicial), the Governing Body of the Legal Power, having among its duties, as stated in the Article 107 of the Organic Law 6/1985, of 1 July, the inspection of courts and tribunals, is endowed in order so to perform with an Inspection Service that periodically develops, in accordance with the Article 148 of the aforementioned Law, the duties of checking and controlling the performance, among other things, of the Courts responsible for the execution of sentences referred to in this section of the CPT report.

This function is performed through carrying out programmed activities and visits, the aims of which include analysing each legal body and the activity performed by the civil servants integrating its staff, as well as reviewing, where deemed appropriate, their specific and particular activities. This is stated by the Article 124 of 22 April 1989 Agreement of the CGPJ, through which the Regulation of the Organisation and Performance of the Board is approved.

Thus, whenever any anomaly is detected in complying with the professional duties of the legal staff – as might be those relating to fulfilling their duty to visit the penitentiary centres mentioned by the CPT – the Inspection Service may address its recommendations to the judge responsible – as in the case of performing such visits with weekly regularity – bring before the competent bodies within the CGPJ the relevant measures to be adopted, in view of the needs or the deficiencies shown by the inspection activities, among them the **follow-up plans** – in order to carry out necessary checks and controls so that the visits are performed with the due regularity pointed out – and, in the cases of non-observance that could be qualified as legal disciplinary infringement, the rendering of accounts to the Disciplinary Commission.

In compliance with their duties, it has to be pointed out that the Inspection Service of the CGPJ has logged written deeds making it obvious that the Courts responsible for the execution of sentences paid, in 2007, 2.824 visits to the penitentiary centres, 155 of which made use of video-conference means. These figures assert the fulfilment of their duties, the paying visits to the centres, as well as the start-up of mechanisms enable to substitute for the lack of visits owing to material impossibility, as is the case of the videoconference system.

Section 147.

The CPT requests detailed information of the way in which, since the 2003 reform, the Audiencia Nacional has carried out all the aspects of its assigned task of supervising the situation of those inmates whom it issued preventive arrest or sentence serving orders [In Spain, the Audiencia Nacional is a central criminal court and a central administrative division. In both cases, its jurisdiction scope is nation-wide, and matters referred to it have "extraterritorial" –i.e. non autonomous– content].

From this section of the CPT report, the CPT may be inferred to have made a mistake when interpreting the aforementioned reform. There has been no increase in the competence of the legal procedure bodies within the Audiencia Nacional, expanding its competence so as to cover the responsibility for the execution of sentences. Instead, section 4 of the Article 94 of the Organic Law 6/1985, of 1 July, has been amended in order to create a new type of territorial body, the Central Court responsible for the execution of sentences, whose territorial duties are those stipulated in the Penal General Law regarding the implementation of the sentences which deprive the person from freedom and the carrying out of safety measures, the jurisdictional control of the penal authorities´ disciplinary power, the ensuring the inmates´ rights and benefits in the penitentiary institutions, and other purposes stated by the law re the offences in which the Audiencia Nacional is competent.

Thus, the Central Judge responsible for the execution of sentences represents a continuity in the judging procedure, started at the beginning of the dossier, followed up when a ruling is decided and, later on, by implementing that ruling in the whole of its contents. The purpose of the Central Judge responsible for the execution of sentences consists, then, of strengthening the executive guarantee of the sentence and of the safety measures, which will be carried out in the way and through the means of the methods and circumstances stipulated by law, always with the strictest observance of the respect due to the rights and the legitimate interests of the inmates.

The mentioned reform also amends the General Penal Law, wording anew the section 2. h) of its Article 76, stating the function of the Judge responsible for the execution of sentences, which consists in visiting the penal institutions as foreseen by the LECrim (Ley de Enjuiciamiento Criminal – Law of Penal Proceeding), adding a specific disposition respecting the Central Judge responsible for the execution of sentences, according to which he will be enabled to request, in order to fulfil his function, the legal assistance of the Judges responsible for the execution of sentences in the place where the establishment to be visited is located. He periodically frequents, therefore, the penitentiary institutions, and checks whether legal measures are punctually abided to, concerning the sanctions of deprivation of freedom.

In short, the Central Judge responsible for the execution of sentences, in the area of competence of the Audiencia Nacional, is entrusted the key mission of bringing his maximum zeal and attention to inspecting and controlling everything related to the penitentiary system and to the persons involved therein, whether in an active or passive way.

Owing precisely to this, his role is not a mixed, but a clearly legal one; it is he, therefore, who is endowed with inspection capacities, which he successfully performs requesting reports and visiting prisons, checking the searches performed in the latter and the due application of the regime, giving his approval to leaves of absence, deciding on the external assignments of inmates in a controlled workplace position, issuing or cancelling proposals of freedom on parole and, finally, taking also part in disciplinary matters.

In fact, re the CPT recommendation as to paying out inspection visits, it is necessary to point out that, according to the data logged in by Inspection Service in 2006, the Central Court responsible for the execution of sentences paid the following visits to penitentiary institutions: 9 and 12 February (CP Madrid V), 16 February, 7 and 29 June (CP Madrid VI), 29 March (CP Jaén), 30 March (CP Almeria), 31 March (CP Granada), 5 July (CIS Victoria Kent), 30 November (CCPP of Alicante I, Alicante II and Psychiatric Alicante), 1 December (CP Murcia) and 14 December (CP Valencia).

III.5. Unaccompanied foreign Minors

III.5. 1 Preliminary Observations

Section 149.

In this section, the CPT recalls the competent Spanish authorities that it behoves them to ensure sufficient regulating assistance and material to the NGO subcontracted to manage the two centres, School Home I and School Home II, included in the Emergency Assistance Facilities for Unaccompanied Minors in the Canary Islands (Dispositivo de Emergencia de Atención de los Menores no Acompañados en Canarias – DEAMENAC). The CPT states, likewise, that such resources must be intended to ensure appropriate living conditions and to provide an adequate treatment to the boys lodged therein.

As a preliminary consideration, it must be pointed out that Spain has a consolidated legal framework in which refers the protection to be lent to minors, whether foreign or not. Thus, the 1978 Spanish Constitution, as the highest regulatory text of the legislation, states in an express way, when listing out the governing principles of social and economic policies, in Title I, Chapter III, the duty of Public Authorities in ensuring social, economical and legal protection to families, and, when applied to the latter a with a specific way, the protection to minors.

On the other hand, Spain ratified in 1990 the United Nations Convention of the Rights of the Children issued the 20 November 1989, assuming a greater acknowledgment of the role of the latter plays in society and, consequently, the request to supply them with a greater relevance.

This regulation has been currently stressed by adding the Organic Law 1/1996, of 15 January, regulating Legal Protection to the Minor, stating that those under age are active, participating and creative subjects, enabled to modify their own social and personal background; enabled to take part in the search of ways of satisfying their needs as well as the needs of others.

It cannot be, however, ignored that the current location of Spain as a receiving country for migratory inflows has required it to adjust the regulatory framework to a new social reality and to the situations brought in, within the immigration field. Owing to this, Organic Law on Foreign Citizens, in its Article 35, as well as in its developing Regulations, establish, in an express way, a regulation of the measures to with respect to foreign minors.

Both laws, that of Legal Protection of the Minor as that of the Rights and Freedoms of Foreigners in Spain, give full response to allowing to the minor his character as a subject who is acknowledged a series of rights based on principles such as that of the main interest of the minor, the maintenance of family unit as well as the custody of those minors being in a state of abandonment, in the terms set out by the Article 172 of the Civil Code.

Likewise, both regulations grants to the minor has a wide range of rights, among which that of being heard, that of receiving information and that of being granted access to activities or programmes of education or of training implying benefits to them.

In this sense, the Centres of Welcome for Foreign Minors (Centros de Acogida de Menores Extranjeros – C.A.M.E) are obliged to comply with the mandates of the legislation, and to guarantee a suitable treatment to minors, looking after their interests.

Thus, as established by the Protocol of Unaccompanied Foreign Minors, in the Monitoring Centre of Infancy of the Ministry for Work and Social Affairs, whenever a minor immigrant arrives, alone, in Spanish territory, the Police takes care of him and, for want of any documentation to check it, make him undergo a bone density test in order to check his age and his being really younger than eighteen. Should he be so, he is declared in a situation of abandonment and comes under protection within a centre managed by the Government of the corresponding Autonomous Community.

The acceptance centres are obliged to look after those minors, bring them assistance and promote that they should learn the language of the accepting country, and should receive clerical or vocational training in order that, on their reaching eighteen years and having to leave the centre, they might find a job and earn their own living.

Therefore, the Spanish authorities do not only agree to rules referred to in the CPT report, but they have them as guidelines in their interaction with foreign minors, in an effort in which they often face the difficulty of having to comply with all these obligations and provide services to a very high number of foreign minors with the resources available and assigned them, in accordance with the budgetary ability of the Public Administrations.

However, in carrying out that effort, it is essential to ensure the involvement co-ordination of other Administrations and organisations, such as the State law enforcement agencies, the autonomous and the local police, the Office of the Attorney General, the Government Representative and sub-representatives and, finally, the public organisations for the protection of minors, such as the centre of “La Esperanza”.

The Home Schools of which the latter centre consists were designed as emergency facilities allowing temporary stay, until the minors are transferred into the C.A.M.E. Owing to this reason, the DEAMENAC is currently a centre for immediate assistance, temporary in its nature, aimed at those unaccompanied minors being in a state of provisional abandonment, or respecting whom an order or a resolution has been issued by the prosecutor or by the judge, as to their entry into a protection centre, because of their being upon the territory of the Autonomous Community of the Canary Islands.

Nevertheless, the figure for minor arrivals and the degree of responsibility and involvement assumed by the authorities, local as well as national, re the provision of assistance, treatment and admittance of the minors aforementioned make them, in practice, subject to the same obligations as the C.A.M.E.

Once this explanation is pointed out, it is herein considered suitable to clarify some of the data appearing in the CPT report and that might be inexact, might not describe in a precise way the nature of the centre, and other matters therein stated.

So, the report states that the DEAMENAC La Esperanza is located in an old imprisonment centre, having two storeys and aimed at juvenile delinquents. To be exact, the DEAMENAC is an old Home School, an educational macro-residence set by the Council for Education, closed in the middle of the nineties. Later on, the imminent coming into force of the Organic Law 5/2000, of 12 January, regulating the Penal Responsibility of Minors caused a very small part of the building to be enabled as a centre for minors submitted to legal measures, creating the space known as Nivaria, closed several years ago. The massive influx of minors into the territory of the Canary Islands ensured, once the creation of the DEAMENAC was decided, that the occupation of the latter began in the aforementioned part, being then the one provided with the best facilities (i.e., reformed of late and immediately enabled for occupation) while the rest of the building were submitted to full upgrading.

However, at the present date, the features that the CPT report considered "prison-like" are practically nonexistent.

Section 150.

The CPT requests from the Spanish authorities their comments on the reason to locate within the same building two centres that work separately.

The CPT considers in its report that "*it would be preferable to have a different centre available, having central administrative structure and composed of a series of small units, with diverse basic personnel staff in charge of the various ages and needs of the minors*". It understands that this focus would also further the centre ability to adapt its lodging capacity to the needs that could eventually appear, and to offer a range of activities of use in agreement with the age as well as with the amount of the unaccompanied minors.

The way the DEAMENAC is configured, divided into its two sections, is due to the different function of each of them. Thus, first of them carries out the initial acceptance and is, therefore, the one to which the minor must adapt himself from the moment of his joining it, which implies a high turn-up ratio. On the other hand, the second, even while keeping its conditions proper to an emergency facility, is a much more stable resource facility, lodging already consolidated groups of minors.

On the other hand, it must not be ignored, as regards the assistance to minors, that very large centres are already totally rejected, and that making use of them in these cases is owed to temporary and emergency reasons, owing precisely to which, creating sections within the same infrastructures is aimed at lessening the impact perceived as looming in the aforementioned macro-centres.

On the other hand, it has to be pointed out that the impression gathered by the CPT Delegation of the CPT at the DEAMENAC was one of "disorganisation, lack of planning and inefficiency in the use of the scarce resources available", with no explanation of the reasons leading to such impression. In this matter, it is to be emphasised that the high amount of minors joining the DEAMENAC “La Esperanza”, as well as the difficulties found while taking the acceptance process into effect, lends a very high complexity to the task of planning and remedying the needs that appear. To mention a mere example of these, it is necessary to pinpoint the amount of time that needs to be invested in processing so large an amount of return formalities, with the guarantees specified thereof by the Spanish regulations on foreign citizens and immigration. The same thing could be said of the time spent by the consular services of the countries of origin of these minors, in order to check their identity and nationality so that they can be transferred, where needed, to their repatriation, should it be considered legitimate.

III.5.2 Living conditions

- The authorities must ensure in every time the attendance of a staff member having the appropriate training in order to allow him to lend first-aid assistance, and study the possibility for a single, suitably equipped, infirmary to provide service to both schools (section 155).

Section 152.

- The CPT points out that the authorities must adopt the measures deemed necessary to improve the living conditions in the DEAMENAC facility “La Esperanza”, and especially:
- to fully upgrade the lodging areas, this including dismounting the safety elements having prison-like nature, and ensure the lodging rooms not to be provided with barred windows;
- to ensure that there be a constant supply of hot water, and suitable heating;
- to guarantee all the minors to be provided with clothing articles suitable during every season, as well as with enough blankets.

It points out, likewise, that measures must be adopted without undue delay in order to ensure that all the boys of the DEAMENAC facility are given education and vocational training, or both, in accordance with what the legislation in force establishes. On the other hand, the venues where such activities are organised should be appropriate.

Regarding the living conditions of the minors residing in the DEAMENAC, it is necessary to point out, indeed, that some of the characteristics owing to the previous design of the centre are still in place. This is owed to the urgent need with which the facility was opened to its current use, something that hindered having time enough to begin a full upgrading of the facilities. On the other hand, full priority was assigned, in the first place, to the urgency to lend assistance to the needs of the foreign minors that have been arriving – and go on doing so – into Spanish territory.

This urgency prevented, therefore, the timely upheaval of every facility. This upheaval has been gradually proceeding by wings and by storeys, in order for the latter to be occupied in a progressive way, too. What is true is that, to present date, it can be stated that "prison-like" items are, at present time, residual. Nevertheless, the permanence of the bars in the windows is due to safety reasons, in order to avoid any possible accident and to ensure, at the same time, that the minors know and practice how to evacuate the building, given the case of any eventuality or incident.

Re the complaints issued by several boys, relating to the lack of heating and of hot water until the day before the visit of the CPT Delegation, it has to be admitted that the deterioration and lack of use, for years, of the building boiler have generated, in view of the urgency of the situation, the need to have electrical heaters in different areas, so that hot water availability is really, so far, subject to limitation. It is the intention of the authorities in charge of the Centre to carry out the steps needed in order to ensure hot water availability during the next months.

Re the complaints uttered by some boys, who told the Committee Delegation that they had neither warm clothes nor blankets to keep the cold off, the DEAMENAC authorities have not been told of such a lack in the clothes supply. On a highly contrary way, the residents are even allowed a fortnightly economic allocation to face expenditure of several kinds, administer by themselves the aforementioned allocation, and are, besides, provided with clothes as well as with footwear. Owing to this reason, making estimates based on noted facts and on the reality of the data provided by the centre authorities, it is assumed that the CPT report has made a generalisation out of a really unique fact.

Section 153.

The CPT points out that the authorities should ensure that recreational sport activities be organized, as much at Home School I as in School Home II. These recommendations are also applicable to the other centres for unaccompanied foreign minors.

Re the education aimed at minors, since the DEAMENAC were created, work has been in progress in co-ordination with the Council of Education, the universities, the Culture and Sports Service and with the Employment Service of the Canary Islands, in order to design training programmes and integrate the minors within the academic educational system, as well as within the vocational training system. Such being the case, as of current date more than 80% of the minors are undergoing some activity of this kind, the rest of the cases owing to gradual integration reasons, which delay the insertion of the minor within this kind of facilities and activities.

However, the CPT observations re the state of the facilities having as their purpose giving courses and supplying the minors with other kinds of activities have been taken into account by the Spanish authorities, and, more especially, by those in charge of the DEAMENAC, in order to carry out the reforms and upgrades pointed therein and to ensure, through them, a greater service quality, which, as its is to be insisted upon, has not reached high levels owing to the urgency lent to every activity, given the high level of occupation kept by the centre and the high amount of minors arriving into Spanish territory through migration inflows.

Section 155.

The CPT points out that it would be desirable to get previous availability of infirmary staff, to ensure that there be at least a nurse in full-day availability, all along the whole week, in care both of Home School I and II.

Presently, all efforts needed are being carried out in order to ensure the resources guaranteeing a more frequent and continuous attendance of the staff, as referred to by the CPT.

III.5.3 Staff-related matters

Section 157.

The CPT recommends the authorities to review the staff personnel situation in DEAMENAC, facilities, including their employment conditions.

Re this meaning, the DEAMENAC centre management has been conferred, via a collaboration agreement, to the Solidary Association "Nuevo Mundo". It has been thus entrusted to this Association the custody and assistance to unaccompanied foreign minors, after having currently upgraded four residence centres in an urgent way, due to the constant arrival of minors coming by "cayuco" (very large boats) and given the overcrowding undergone by the social welfare network in charge of the town Councils. This situation brought about the urgent need to look for real estate plots, and determine what collaborating children assistance organisation had the greater capacity and the larger means so as to fit out the facility within the short available time. The Solidary Association "Nuevo Mundo" was the one enabled to supply the greater guarantees.
On the other hand, even though it is true that personnel contracting situation might be improved in the DEAMENAC centre, it is necessary to be aware of the difficulty in engaging qualified staff in the Autonomous Community of the Canary Islands, faced with the high amount of residents minor in age, and with the management needs of the centre, through its two Schools. This is a situation generally extensive to every protection centre. On the other hand, too, as centre is a variable occupancy facility, staff contracting depends on the amount of minors residing in each period.

III.5.4 Other matters

Section 158.

The CPT requests the authorities´ comments re the lack of assistance to prepare those minors having 17 years of age, in order for them to be returned to their countries of origin.

It is not correct to state that, on attaining eighteen years, the minors are returned to their country of origin if they do not have a residence permit.

In fact, the current rules on Foreign Citizens and Immigration (Article 92 of the Regulation of Foreign Citizens) state, firstly, that, once nine months have passed since the minor was brought before the competent services in charge of protecting the minors, with no possibility of carrying out his repatriation into his country of origin, the minor will be granted a residence authorisation in Spain. Furthermore, as stated by the aforementioned rules, all along that time range he will be granted the right to attend all those activities or education or training programmes that, according to the criteria of the competent organisation for protecting the minors, be of a higher benefit for them, without prejudice as whether the aforementioned repatriation might later on be carried out.

However, the fact that a minor, protected by the competent organisation for protecting the minors, reaches his eighteen years without obtaining the residence authorisation in Spain referred to in the previous paragraph, does not preclude that he might be, likewise, granted a temporary residence authorisation owing to exceptional circumstances. In order to be granted this authorization, he must have taken appropriate part in the formative actions and the programmed activities that the protecting organisation could have programmed to promote his social integration.

Consequently, should he or should he not have been granted the authorization, he may assert his own rights, and the competent authority, the Government Sub-representative in the Canary Islands, may determine whether a posteriori days of leave be granted. It is not possible, whatsoever, to speak of generalised, automatic extradition proceedings.

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The annexes can be found on the CPT's website (www.cpt.coe.int).
In accordance with Article 11, paragraph 3 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, annexes 1, 2, 3, 19, 20, 21 and 22 have not been made public. Annex 26 has not been published for security reasons.