



CPT/Inf (96) 9 [Part 1]

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

**from 1 to 12 April 1991**

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

Strasbourg, 5 March 1996

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Copy of the letter transmitting the CPT's report

Strasbourg, 21 October 1991

Dear Ambassador,

In pursuance of Article 10, paragraph 1, of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment, I have the honour to enclose herewith the report to the Spanish Government drawn up by the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) after its visit to Spain from 1 to 12 April 1991. The report was adopted by consensus by the CPT at its tenth meeting, held from 17 to 20 September 1991.

In order to facilitate consideration of the report by the Spanish Government, it is accompanied by a preface explaining the CPT's mandate.

I would draw your attention in particular to paragraph 230 of the report, in which the CPT requests the Spanish authorities to provide an interim and a follow-up report on action taken upon its report. More generally, the CPT is keen to establish an ongoing dialogue with the Spanish authorities on matters of mutual interest, in the spirit of the principle of co-operation set out in Article 3 of the Convention; consequently, any other communication that the Spanish authorities might wish to make would also be most welcome.

The report is transmitted in english. A french version of the report could be provided in due course if this were to be requested by your authorities. However, any translation of the report into Spanish should be made on the basis of the english version, which is the authentic text.

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

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

Yours sincerely,

Antonio CASSESE  
President of the European Committee for  
the prevention of torture and inhuman  
or degrading treatment or punishment

Mr José Manuel LACLETA  
Ambassador Extraordinary and Plenipotentiary  
Permanent Representative of Spain to  
the Council of Europe  
24, Allée de la Robertsau  
67000 STRASBOURG

## PREFACE

As the European Committee for the prevention of torture and inhuman or degrading treatment or punishment is a new institution, knowledge of its mandate and functions is inevitably limited. The CPT has therefore deemed it appropriate to begin the first of its reports to each Party by setting out some of the Committee's salient features. This should prove particularly helpful in differentiating the basis and aims of the CPT from those of two other Council of Europe supervisory bodies within the field of human rights: the European Commission and European Court of Human Rights.

Unlike the Commission and the Court, the CPT is not a judicial body empowered to settle legal disputes concerning alleged violations of treaty obligations (i.e. to determine claims ex post facto).

The CPT is first and foremost a mechanism designed to **prevent ill-treatment from occurring**, although it may also in special cases intervene after the event.

Consequently, whereas the Commission's and Court's activities aim at "conflict solution" on the legal level, the CPT's activities aim at "conflict avoidance" on the practical level.

This being so, the guiding maxim for the CPT when performing its obligations must be to "extend the widest possible protection against abuses, whether physical or mental" (quotation from the 1979 UN Code of conduct for law enforcement officials as well as from the 1988 Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, both adopted by the General Assembly).

The CPT's activities are based on the concept of co-operation (Article 3 of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment). The CPT's task is not to publicly criticise States, but rather to assist them in finding ways to strengthen the "cordon sanitaire" that separates acceptable and unacceptable treatment or behaviour. In fulfilling this task the CPT is guided by the following three principles:

- i) that the prohibition of ill-treatment of persons deprived of their liberty is absolute,
- ii) that ill-treatment is repugnant to the principles of civilised conduct, even if used in milder forms, and
- iii) that ill-treatment is not only harmful to the victim but also degrading for the official who inflicts or authorises it and ultimately harmful to the national authorities in general.

The CPT first of all explores the prevailing factual situation in the countries it visits. In particular it:

- i) examines the general conditions in establishments visited;
- ii) observes the attitude of law enforcement officials and other staff towards persons deprived of their liberty;
- iii) interviews persons deprived of their liberty in order to understand how they perceive (i) and (ii) and hear any specific grievances they may have;
- iv) examines the legal and administrative framework on which the deprivation of liberty is based.

Subsequently, the CPT reports to the State concerned, giving its assessment of all the information gathered and providing its observations. In this regard, it should be recalled that the CPT does not have the power to confront persons expressing opposing views or to take evidence under oath. If necessary, it recommends measures designed to prevent the possible occurrence of treatment that is contrary to what reasonably could be considered as acceptable standards for dealing with persons deprived of their liberty.

In carrying out its functions, the CPT has the right to avail itself of legal standards contained in not only the European Convention on Human Rights but also in a number of other relevant human rights instruments (and the interpretation of them by the human rights organs concerned). At the same time, it is not bound by the case law of judicial or quasi-judicial bodies acting in the same field, but may use it as a point of departure or reference when assessing the treatment of persons deprived of their liberty in individual countries.

To sum up, the principal differences between the CPT and the European Commission and European Court of Human Rights are:

- i) the Commission and the Court have as their primary goal ascertaining whether breaches of the European Convention on Human Rights have occurred. By contrast, the CPT's task is to prevent abuses, whether physical or mental, of persons deprived of their liberty from occurring; it has its eyes on the future rather than the past;
- ii) the Commission and Court have substantive treaty provisions to apply and interpret. The CPT is not bound by substantive treaty provisions, although it may refer to a number of treaties, other international instruments and the case law formulated thereunder;
- iii) given the nature of their functions, the Commission and the Court consist of lawyers specialising in the field of human rights. The CPT consists not only of such lawyers but also of medical doctors, experts in penitentiary questions, criminologists, etc;
- iv) the Commission and Court only intervene after having been petitioned through applications from individuals or States. The CPT intervenes ex officio through periodic or ad hoc visits;
- v) the activities of the Commission and Court culminate in a legally binding finding as to whether a State has breached its obligations under a treaty. The CPT's findings result in a report, and, if necessary, recommendations and other advice, on the basis of which a dialogue can develop; in the event of a State failing to comply with the CPT's recommendations, the CPT may issue a public statement on the matter.

## I. INTRODUCTION

### A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment (hereinafter referred to as "the Convention"), a delegation of the CPT carried out a visit to Spain from 1 to 12 April 1991.

The visit formed part of the CPT's programme of periodic visits for 1991. Spain was drawn by lot.

2. The delegation consisted of the following Committee members:

- Mr Antonio CASSESE, President of the CPT (Head of delegation);
- Mr Bent SØRENSEN, First Vice-President of the CPT;
- Mrs Nadia GEVERS LEUVEN-LACHINSKY;
- Mr Claude NICOLAY.

The delegation was assisted by:

- Mr Gordon LAKES, former Deputy Director General of the Prison Service of England and Wales (expert);
- Mr Alberto MANACORDA, Head Doctor at the Naples Psychiatric Hospital (expert);
- Mr Eduardo KAHANE (interpreter);
- Mrs Viviane PARRA-IDREOS (interpreter);
- Miss Melanie ROE (interpreter);
- Mr Marc VISCOVI (interpreter) (from 8 to 11 April 1991).

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

- Mr Trevor STEVENS, Secretary of the CPT;
- Mrs Geneviève MAYER-FABIAN.



**B. Establishments visited by the delegation**

3. The delegation visited the following places of detention:

**Algeciras:**

- Algeciras Prison
- National Police Station (Avenida de las Fuerzas Armadas)

**Bilbao:**

- Bilbao Prison (Basauri)
- Barracks of the "Guardia Civil" (Civil Guard), La Salve
- National Police Station (Calle Gordoniz)<sup>1</sup>
- Headquarters of the Municipal Police<sup>1</sup>

**Cádiz:**

- Cádiz Prison (Puerto de Santa María II)
- Puerto de Santa María I Prison<sup>1</sup>
- National Police Station (Avenida de Andalucía)<sup>1</sup>

**Herrera de la Mancha Prison<sup>1 2</sup>**

**Madrid:**

- Madrid II Prison (Alcalá-Meco)
- Detention Centre for foreigners (Moratalaz)<sup>1</sup>
- Headquarters of the Civil Guard
- National Police Station (including the special transit room), Barajas Airport<sup>1</sup>
- National Police Station, Entrevías District
- National Police Station, Puerta del Sol<sup>1</sup>
- Cells of the Audiencia Nacional<sup>1</sup>

**C. Persons met by the delegation**

4. In addition to its meetings with the persons in charge at the places of detention visited, the delegation held consultations with the national authorities and representatives of relevant non-governmental organisations.

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<sup>1</sup> Places not notified in advance of the visit to Spain.

<sup>2</sup> The primary purpose of the visit to Herrera de la Mancha Prison was to interview certain prisoners held there rather than to examine the conditions of detention in the establishment.

5. The delegation met in particular:

i) Ministries

Ministry of Foreign Affairs

- Mr Francisco Fernández-Ordoñez, Minister for Foreign Affairs
- Mr Fermín Helada, Director General of European Policy

Ministry of Justice

- Mr Tomás de la Quadra Salcedo, Minister of Justice
- Mr Antonio Asunción, Director General of Prison Services
- Mrs María de los Angeles Granados Poveda, Deputy Director General of Prison Services
- Mr Francisco Javier Borrego Borrego, Head of Legal Service and responsible for relations with the European Commission and European Court of Human Rights

Ministry of the Interior

- Mr José Luis Corcuera Cuesta, Minister of the Interior
- Mr Fernando López Villanueva, Head of Private Office
- Mr Santiago Varela, Under Secretary
- Mr Nicolás Martín Cinto, Executive Assessor

ii) Other authorities

- Mr Leopoldo Torres Boursault, State Public Prosecutor
- Mr Alvaro Gil-Robles, Ombudsman (Defensor del Pueblo)
- Mr Ismael Moreno Chamorro, Judge at the Audiencia Nacional
- Mr Ricardo Cedrón, Secretary General of the General Council of Medical Colleges of Spain

iii) Non-governmental organisations

Representatives of the following organisations:

- ACT (Association against torture)
- APDHE (Spanish association in favour of human rights)
- Judges for Democracy
- Salhaketa

**D. Co-operation of the national authorities with the visiting delegation**

6. The CPT's delegation had fruitful discussions with the Ministers of Foreign Affairs, Justice and the Interior at the outset of its visit, as well as with the State Public Prosecutor and the Defensor del Pueblo (Ombudsman). They all indicated a willingness to cooperate with the CPT.

The CPT would also like to formally record its appreciation of the considerable assistance given to its delegation during the visit to Spain, as well as before and after the visit, by Mr Borrego Borrego and Mrs Granados Poveda.

7. On the whole, the delegation was received in a satisfactory manner at the police, Civil Guard and prison establishments visited by it. At many of the establishments, the persons in charge and the subordinate staff displayed a highly co-operative attitude towards the delegation.

8. There was some confusion at the outset of the delegation's visit to the Headquarters of the Civil Guard in Madrid. The delegation was received by a member of the Public Relations Department, who seemed to be unaware that there were places of detention at the Headquarters. However, after some time the matter was clarified and the delegation was taken to the different detention areas within the Headquarters.

9. There was also a delay of approximately 1½ hours (from 4.00 pm to 5.30 pm) on 11 April 1991 before the delegation could begin its visit to the Puerta del Sol Station of the National Police at Madrid. The security staff at the entrance to the building (which accommodates a number of different public services) stated that they had no knowledge of the CPT's visit to Spain and that they could not allow the delegation to enter the premises without an express authorisation from the relevant national authorities. The delegation contacted the central authorities by telephone and requested that they take steps to facilitate the delegation's visit to the police station. A second telephone call to those authorities was made some 45 minutes later, and after another 20 minutes the delegation was received by a senior officer and invited to begin its visit.

The CPT recognises that at the outset of a visit to a place of detention that was not in the list of places notified in advance to the national authorities, some time might be required for the purpose of clarifying at local level the delegation's mandate. However, a CPT delegation should not have to wait 1½ hours before being in a position to start its visit. Such a denial of prompt access is incompatible with Article 8 (1) of the Convention.

The delay at the Puerta del Sol Station of the National Police was all the more striking in view of the fact that at other places of detention visited which had not been notified in advance, no such difficulties arose.

**E. Legal framework**

10. A summary of legal provisions in Spain that are relevant to the subject of torture and inhuman or degrading treatment or punishment of persons deprived of their liberty is given in Appendix II.

## **II. GENERAL CONTEXT**

### **A. Preliminary remarks**

11. One cannot understand and assess the conditions under which persons are deprived of their liberty by a public authority in a given country without considering those conditions in their general context. Although respect for human dignity must be effectively practised in all Parties to the Convention, the historical, social and legal background of each of those countries is different and can account for differences in their response to human rights issues.

12. The task of the CPT is to prevent torture and inhuman or degrading treatment or punishment. This can best be achieved if one looks into the overall context of any forms of ill-treatment, so as to better understand the general reasons and the historical conditions of unacceptable practices, thereby enabling the CPT to suggest the appropriate measures designed to remove, albeit gradually, such practices.

### **B. Three important features of the general situation in Spain**

13. When drawing up its report, the CPT was mindful of the general situation in Spain. The CPT took account, in particular, of three features of the current position there which are relevant to its task of preventing torture and inhuman or degrading treatment or punishment.

14. The first feature can be described at the historical level.

Until 1975, when the Generalissimo F. Franco died, the Spanish political regime was a dictatorship, where allegedly torture by law enforcement officials was a widespread practice, tolerated or perhaps even encouraged by the government authorities, especially insofar as political opponents were concerned. Since then, and more markedly since 1978, when a new Constitution was adopted, Spain has gradually turned into a fully fledged democracy, where all the basic human rights are explicitly laid down in law and formally guaranteed by a modern system of legal safeguards. Nevertheless, the passage from an authoritarian to a democratic regime has not been without its complications. Thus, for instance, it appears that the members of the old State apparatus have not been purged; those who were closely implicated in the old malpractices have been simply demoted or removed from crucial posts. As a consequence, there are still in place some members of the law enforcement agencies who began their service during the period of dictatorship and who may well therefore not be completely attuned to full respect for human rights. The present authorities have, however, undertaken a significant effort to democratize the State institutions and to spread the principle of respect for human dignity.

15. The second relevant feature of the current Spanish situation can be found at the social level.

Spain is beset with both virulent forms of terrorism and increasing criminality linked to trafficking in hard drugs. National authorities are understandably very preoccupied by the need to face these forms of criminality and eradicate them.

As for terrorism, it is practiced by small groups (chiefly ETA and GRAPO) which, however, are very aggressive and resort to the barbarous and indiscriminate murder of State officials and civilians alike. Terrorism, a despicable crime under any circumstances, is especially unacceptable when it is resorted to in a fully democratic country such as Spain, where peaceful avenues are open to any citizen to express his or her political opinions and to suggest changes in society or in the State institutions. It is nevertheless a fact that in Spain, terrorist violence occurs frequently and cannot but elicit a strong response from State institutions.

Less conspicuous than terrorism, but just as dangerous in the long term, is criminality linked to trafficking in hard drugs. The geographical position of Spain, (i.e. its vicinity to Morocco) and the close links of Spain with Latin America, make it an ideal place for drug traffickers to practise their commerce. In spite of the firm action taken by Spanish authorities, this trafficking is on the increase, with all the ensuing related crimes.

16. The third relevant feature of the current situation in Spain can be discerned at the legal level.

Two elements should be underlined in this regard. First, the Spanish Penal Code, which was substantially revised in 1973 and has since then been amended several times, is based on a philosophy that tends to promote the protection of interests such as property, whilst it offers lesser safeguards to human dignity. Thus, for instance, it is striking that Article 204 bis (which, except for the present paragraph 2, was inserted into the Code by a law of 1978) imposes relatively light penalties for acts of torture which do not involve offences under Chapters I (homicide) or IV (serious bodily harm) of Title VIII or Chapter VI (threats and acts of coercion) of Title XII of the Code, whereas heavy penalties are provided for in the Code for other offences such as theft and burglary. As result, officials found guilty of torture in recent years have rarely been sentenced to more than six months in prison. However, the new paragraph 2 of Article 204 bis, which was inserted in 1989, increases the penalties for acts of torture which do not involve offences under the aforesaid chapters; it might therefore be hoped that the Spanish courts will impose heavier sentences in the future.

The second element of the Spanish legal system which is relevant to the CPT tasks concerns the excessive length of criminal proceedings. The CPT has heard widespread allegations, both from detainees and non-governmental organisations, that criminal proceedings in Spain tend to be drawn out. It follows, first, that persons held in prison for long periods awaiting trial suffer from a cumbersome judicial system. It also follows that State officials accused of ill-treating persons in police custody or held in prison are finally acquitted or convicted only after many years. This is obviously a most unsatisfactory state of affairs, irrespective of the actual outcome of a case (the CPT was handed by the relevant authorities a judgment delivered by a court of appeal on 16 November 1990 and relative to acts of torture perpetrated by members of the Civil Guard in May 1981).

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

#### A. Police and Civil Guard establishments

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

17. The delegation spoke with many people about their experiences whilst in the custody of the police or the Civil Guard. Most of them were persons awaiting trial or convicted prisoners held in the prisons visited by the delegation. The delegation interviewed both persons charged with or convicted of ordinary criminal offences and persons charged with or convicted of terrorist offences.

18. A number of allegations of **torture and other forms of severe ill-treatment** by the National Police and the Civil Guard were made. Many (though not all) prisoners held for terrorist offences alleged that they had been tortured following their arrest, and similar allegations were also made by some prisoners held for ordinary criminal offences. Most of the allegations related to periods of police or Civil Guard custody a few years ago. However, some of the allegations related to very recent periods of custody.

19. The forms of torture and severe ill-treatment most commonly alleged were:

- asphyxiation by the placing of a plastic bag over the head;
- electric shocks, applied usually to the genitals, mouth or feet;
- immersion of the head in water;
- severe beating with truncheons while covered in a blanket;
- striking of the head with a heavy book (usually a telephone directory);
- (more rarely) suspension from the wrists or feet;
- threats of execution or serious injury to the detainee or others.

20. Specific mention should be made of one prisoner interviewed by the delegation whose case had at an earlier stage been the subject of a request for information under Rule 30 of the CPT's Rules of Procedure. He was awaiting trial on charges concerning terrorism and alleged that he had very recently been tortured by Civil Guard officers. The interview did not enable the delegation to reach a firm conclusion as to the veracity of his allegations.

21. Although the number of allegations of recent torture and severe ill-treatment was limited, the delegation did hear an extremely large number of allegations of **less severe forms of ill-treatment** by law enforcement officials, including by members of the municipal police. It was said to be commonplace for suspects to be slapped, punched, kicked or verbally abused both at the time of their arrest and in the course of their custody. As regards the latter period, anything other than subdued behaviour (e.g. banging on a cell door to attract attention; reactions related to withdrawal symptoms; an insistently made request) is apparently likely to meet with a violent response.

22. As regards the delegation's own on-site observations, it met a number of detained persons at the National Police stations visited in Algeciras, Bilbao, Cádiz and Madrid (Barajas Airport and Puerta del Sol). They were all being held in connection with criminal offences of a non-terrorist nature or under the Aliens legislation.

No allegations of torture were made and the general appearance of the detainees was not such as to provide grounds for concern in this regard. One detainee alleged that shortly before the delegation's visit, a police officer had struck him on the arm with his truncheon after he had banged on his cell door when refused a cigarette. On examination by one of the delegation's medical doctors, the detainee was found to have a lesion (oval-shaped haematoma in a slanting position on the external third section of the left forearm, approximately 4 x 2 cms in size) consistent with his allegation. Another detainee alleged that he had been beaten on his back with a truncheon and kicked at the time of his arrest (apparently he had tried to run away); on examination by one of the delegation's medical doctors, he was found to have lesions on his back consistent with his allegation. No other allegations of physical ill-treatment were made. However, some detainees (foreigners) complained of verbal abuse by police officers, and another detainee alleged that he had been threatened by police officers before the arrival of his ex officio lawyer and the making of his statement.

23. No persons were in custody at the time of the delegation's visits to the Headquarters of the Civil Guard in Madrid, the National Police Station of the Entrevías District of Madrid, the La Salve Civil Guard Barracks in Bilbao and the Municipal Police Headquarters in Bilbao.

As regards more particularly the La Salve Barracks in Bilbao and the Civil Guard Headquarters in Madrid, the delegation had received reports that detained persons had been tortured or otherwise severely ill-treated in those places in the recent past. The delegation's inspection of these places of detention and the general attitude and demeanour of the officers present offered little guidance as to the possible veracity of those reports.

24. It is generally acknowledged in both official and NGO circles, on the one hand, that during the fascist regime in Spain, the police and the Civil Guard frequently had recourse to torture and severe ill-treatment when interrogating suspects, and, on the other hand, that recourse to such methods had reduced significantly during the years following the introduction of a democratic regime. However, the extent to which - if at all - torture and severe ill-treatment are still practised by the police and the Civil Guard is a controversial subject. It remains the case that a number of persons detained, in particular (but not exclusively) those held on suspicion of terrorist offences, make allegations of such treatment. The relevant authorities contest these allegations, and claim that it is the policy of terrorist organisations (especially the ETA) to have its members systematically allege that they have been tortured by the law enforcement agencies. ETA prisoners met by the delegation in the course of its visit denied the existence of such a policy.

25. The CPT is satisfied that recourse to torture or other forms of severe ill-treatment by law enforcement officials is no longer a common practice in Spain. However, its delegation did hear a certain number of allegations of very recent torture or severe ill-treatment, and not only, it should be stressed, from persons detained on suspicion of offences of a terrorist nature. It would therefore be premature to conclude that the phenomena of torture and severe ill-treatment have been eradicated.



26. With regard to the previously mentioned allegations of general rough treatment of detained persons by law enforcement officials, the sheer number of the allegations lends them credibility, as do certain of the delegation's on-site observations. This suggests, firstly, that the average law enforcement official could be better trained in the art of handling, and more particularly of speaking to, persons in their custody (i.e. interpersonal communication skills) and, secondly, that senior law enforcement officials are not exercising sufficient control over the actions of their subordinates.

27. Spanish law contains a number of provisions penalising torture and other forms of ill-treatment. Further, several safeguards against torture and ill-treatment are formally provided for. Later on in this report the CPT will recommend certain reinforcements of those safeguards. However, it should be emphasised that legal and other technical safeguards - while important - will never be sufficient; the best possible guarantee against ill-treatment is for its use to be unequivocally rejected by law enforcement officials. It follows that the provision of suitable **education on human rights questions and of adequate professional training** is an absolutely essential ingredient of any strategy for the prevention of torture and other forms of ill-treatment. Nowhere is this more true than in a country which in the fairly recent past has been governed by a regime that favoured the resort to torture and other forms of ill-treatment by law enforcement officials.

28. The above-mentioned education and professional training should exist at all levels of the law enforcement hierarchy, and should be ongoing. It should seek to put across and develop two points. First, that torture and other forms of ill-treatment are an affront to human dignity and as such are fundamentally incompatible with the values enshrined in the Spanish Constitution as well as in many international instruments ratified by and binding upon Spain. As was rightly stated by the Spanish Supreme Court in a judgement of 23 February 1990, torture is a very grave crime "por cuanto su realización efectiva no solo atrae la reprochabilidad sobre sus autores, sino que, en cuanto delito de propia mano, compromete la credibilidad del Estado social, democrático y de derecho". Second, that torture and other forms of ill-treatment are grossly ineffective means of combatting crime. Other interrogation and investigation techniques, which respect human rights, are likely to yield better results from a security standpoint.

29. In the light of the above remarks, **the CPT recommends:**

- **that a very high priority be given to human rights education and professional training for law enforcement officials of all ranks and categories. Experts not belonging to the law enforcement agencies should be involved in this education and training;**
- **that an aptitude for interpersonal communication be a major factor in the process of recruiting law enforcement officials and that, during the training of such officials, considerable emphasis be placed on acquiring and developing interpersonal communication skills;**
- **that senior law enforcement officials be required to deliver to their subordinates the clear message that the ill-treatment of detained persons is not acceptable and will, if discovered, be dealt with severely.**

## 2. Conditions of detention in the police and Civil Guard establishments visited

### a. introduction

30. Police and Civil Guard cells are meant to be used as short-stay accommodation. Consequently, high standards cannot be expected of such cells, though certain elementary material conditions must be met.

31. All cells should be of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation. Further, persons obliged to stay in custody overnight should be provided with a clean mattress and blankets.

Persons in custody should be allowed to comply with the needs of nature when necessary and in clean and decent conditions, and be offered adequate washing facilities. They should also be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) everyday.

### b. situation in the establishments visited

32. The conditions of detention in the police and Civil Guard establishments visited by the CPT's delegation varied considerably; conditions were satisfactory and even very good in some places, but extremely poor in others.

33. The conditions in the **National Police Station at Barajas Airport (Madrid)**<sup>3</sup> were entirely satisfactory and call for no particular comment by the CPT. Further, the cells at the **La Salve Barracks of the Civil Guard at Bilbao**, albeit rather small (5 to 6 square metres), were found to be satisfactorily equipped and in pristine condition. However, a shower facility for detainees should be provided.

34. Conditions of detention in the main **National Police Station (Avenida de las Fuerzas Armadas) in Algeciras** can on the whole be considered as acceptable for persons held in normal police custody (maximum detention of 72 hours), though again the absence of a shower facility for detainees needs to be remedied.

However, the delegation was concerned to learn that foreigners detained under the Aliens legislation (maximum detention of 40 days) were frequently held at the station (officers at the station stated that there was a detention centre for foreigners at Malaga, but that this was not large enough to meet the demand). The custody register showed that several such persons had been held at the station in 1991 for some two to three weeks. Facilities at the station are quite inadequate for such lengthy stays (unfurnished cells; very limited possibility for outdoor exercise; no regime activities).

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<sup>3</sup> to be distinguished from the "special transit room"; see paragraph 79.

35. Conditions of detention in the **National Police Station at Bilbao (Calle Gordoniz)** were generally speaking quite satisfactory. However, the lighting within at least some of the cells needs to be improved.

36. The cellular accommodation at the **Headquarters of the Municipal Police at Bilbao** displays some surprising deficiencies for a facility built as recently as 1989. In particular, the size of the single cells (scarcely more than 4 square metres) borders on the unacceptable for stays which, according to the custody register, frequently last more than 24 hours and on occasion last up to three days. It would be appropriate to enlarge at least some of the cells by removing the adjoining walls. Further, the cells enjoy no natural light, and the artificial lighting is rather poor and gives rise to a disagreeable reflection off the white-tiled cell walls.

The delegation was also surprised to learn that a person obliged to stay in custody overnight was given a blanket but no mattress; as already stated, mattresses should be provided to such detainees.

37. As regards the conditions of detention at the **National Police Station (Avenida de Andalucía) in Cádiz**, the cells were of a reasonable size and had adequate lighting and ventilation. However, they were in a very dirty condition, as were the blankets and mattresses provided to detainees. The general level of hygiene within the facilities for detainees needs to be improved.

38. The delegation saw two detention areas in the **Civil Guard Headquarters in Madrid**: two cells on one of the building's upper floors, belonging to the "Judicial Unit for the Madrid Region", and a suite of eight cells in the basement, apparently used to accommodate suspects held on terrorist charges who are transferred to the Headquarters.

Conditions of detention in the two cells of the Judicial Unit were deplorable. The cells were very small (2.10m x 1.60m = 3.36 square metres), and had extremely poor lighting and ventilation. Moreover, the cells (including the mattresses and blankets) were in a dirty and unhygienic condition (e.g. numerous blood stains on the walls and blankets). The delegation was told that persons were normally not detained in the cells for more than 4 to 5 hours. However, the custody register indicated that some two weeks previously, two persons had been held in them for 3 days.

The detention of a person in an excessively small, or dark, or unventilated cell is not acceptable to the CPT, a fortiori if these factors are combined; the effect of such conditions on the detainee may in itself amount to inhuman or degrading treatment. The above-mentioned cells of the Judicial Unit are fit only to be used for temporary holding purposes (i.e. detention for a maximum of a few hours), and this subject to the strict condition that they are provided with adequate lighting and ventilation, and kept reasonably clean. They should not be used to accommodate persons obliged to stay in custody overnight.

The cells in the basement of the building were of a better size (varying from 6 square metres to more than 8 square metres), and had adequate artificial lighting. However, the ventilation and heating in the cells should be checked; they appeared to be inadequate. Moreover, the mattresses and blankets, and the cells in general, are in urgent need of cleaning; the turning over of several of the mattresses revealed rotting food as well as blood stains on the sleeping blocks. The installation of a shower facility for detainees is also required.

39. The cells at the **National Police Station of Entrevías (Madrid)** had no evident means of ventilation and extremely poor lighting; on both points improvements should be made without delay. Further, the cells were very dirty (blood and excrement stains on the cell walls; presence of fleas; etc.).

40. The **National Police Station of Puerta del Sol** acts as the holding centre for persons detained by other National Police stations in Madrid, prior to their appearance before a judge: it therefore receives a large number of detainees (on average 50) everyday. As a result, the great majority of detainees spend less than 24 hours in the station. Certain detainees might stay up to two nights, and a very small minority (e.g. illegal aliens) several days.

Inspection of the premises revealed an old labyrinth of underground cells, many of which were apparently no longer used. The area currently in use consisted of approximately 30 cells of various sizes, all of which had recently been repainted. The cells, mattresses and blankets were nevertheless very dirty, as for that matter were the sanitary facilities. The cells were also gloomy, the artificial lighting being quite inadequate.

The custody register (which indicated cell numbers) showed that there was a tendency to concentrate many detainees into just a few of the cells. This was borne out by the actual situation at the time of the delegation's visit. Whereas most of the cells were empty, the delegation discovered six detainees (foreigners) sleeping in a cell (4 on the raised platform, 2 on the floor) measuring 14 square metres. Someone had vomited at an earlier stage of the day, but apparently no efforts had been made to clean the cell. The conditions of detention of these detainees were repugnant.

Clearly, there is considerable room for improvement in this station in such matters as cell cleanliness and lighting, distribution of the detainees among the cells, sanitary and washing facilities (no shower was available for detainees), etc. However, it might also be asked whether the National Police could not find more modern and better equipped premises for its main holding centre for detainees in Madrid.

41. None of the cells seen in the different establishments visited possessed a toilet or running water. Access to toilet and washing facilities was always controlled by the police or Civil Guard officers. In this connection, a number of the persons in custody complained that officers were often very slow to respond to requests for access to toilet facilities.

As already indicated (paragraph 31), detained persons should have ready access to toilet facilities at all times.

42. The delegation heard many allegations in the prisons visited that persons in police or Civil Guard custody were not given sufficient to eat or drink. Interestingly, no complaints on this subject were made by the persons actually in police custody met by the delegation.

The delegation was told by the officers in charge that detainees were provided with three meals a day. However, no record was kept of meals provided (see further under paragraphs 64 and 65).

c. action proposed

43. **The CPT recommends the Spanish authorities:**

- **to review the conditions of detention in the different police and Civil Guard establishments visited by its delegation, in the light of the remarks made in paragraphs 33 to 41;**
- **to take appropriate steps to ensure that the conditions of detention in police and Civil Guard establishments in general meet the requirements indicated in paragraph 31;**
- **to explore the possibility of withdrawing from service the cellular accommodation at the Puerta del Sol National Police Station.**

44. As regards more particularly the detention at the National Police Station of Algeciras of persons held under the Aliens legislation, **the CPT recommends that the Spanish authorities take the necessary steps to accommodate such persons elsewhere, in a place offering better facilities.**

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

a. notification of custody, the right not to be held incommunicado and access to legal assistance

45. The relevant legal provisions in Spain relating to these matters are set out in Appendix II. In summary, the position is that a detained person has the right to have the fact that he has been detained and the place of his detention notified to someone of his choice (Article 520 (2) (d) of the Code of Criminal Procedure). Further he has the right to appoint a lawyer and request his presence when making statements; if the detainee does not proceed to such an appointment, he will be provided with an officially appointed lawyer (Article 520 (2) (c)). The detainee and lawyer may consult in private after the statement has been made (Article 520 (6) (c)). Contacts (visits, correspondence, etc.) between the detainee and his relatives and other persons are foreseen in Articles 523 and 524.

However, a detainee may be held incommunicado on the basis of a judicial decision. In such a case, and for so long as he remains incommunicado, he does not enjoy the rights provided for in Article 520 (2) (d) (notification of the fact and place of his detention to someone of his choice) and Article 520 (6) (c) (consultation in private with a lawyer) and his lawyer shall be officially appointed; further, the contacts between the detainee and his relatives and other persons foreseen in Articles 523 and 524 are not allowed (Article 527).

46. Although they are formally speaking two distinct matters, periods of police custody and of incommunicado detention tend to be closely linked. In particular, it is not uncommon for a person suspected of a terrorist offence to be held incommunicado throughout the whole period of police custody, which may be extended to 5 days (cf. Article 520 bis).

47. One consequence of this situation is that someone may be detained for a considerable time without having the right to have the very fact and place of his detention disclosed to his family or a third party; in other words, he may be held for several days in secret insofar as his family and/or friends are concerned (a situation which might be described as an aggravated form of incommunicado detention)<sup>4</sup>. Certainly, the withholding of information about the fact of someone's detention and the place where he is being held may be justified for a brief period by the needs of the investigation. However, the possibility under the law of withholding this information for several days (up to 5 days in certain cases) indicates that a proper balance has not been struck between the requirements of investigations and the interests of detained persons.

**The CPT recommends that the period during which a person in the custody of the police or the Civil Guard can be denied the communication provided for in Article 520 (2) (d) of the Code of Criminal Procedure be shortened substantially.**

48. As regards incommunicado detention in its usual meaning (i.e. denial of contacts with other persons), the CPT recognises that strong arguments can be advanced in favour of exceptions, in certain well-defined situations, to the general principle that a detained person should not be held incommunicado. However, the application of such exceptions must be strictly limited in time. It is highly undesirable for a detainee to have contact practically exclusively with law enforcement officials<sup>5</sup> for a period of up to five days, especially when the period in question is that during which the risk of ill-treatment is the greatest.

**The CPT recommends the Spanish authorities to reduce the length of time during which a person in the custody of the police or the Civil Guard can be held incommunicado.**

49. As regards access to legal assistance, the right under Spanish law to the presence of a lawyer when making statements to the police is capable of receiving, and receives, different interpretations. At many of the places of detention visited, it was understood in the sense that a lawyer must be present when a statement by the detainee is formally recorded for the first time. This would suggest that prior to the taking of the detainee's statement, questions may be put to him in the absence of a lawyer. However, officials at the Ministry of Justice affirmed that the law required that a lawyer be present whenever any questioning of the detainee takes place.

In any event, the CPT's delegation heard from several sources that the questioning of detainees in the absence of a lawyer was common, especially for certain types of offences.

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<sup>4</sup> Of course, the circumstances of the detainee's arrest may be such that his family and/or friends are aware of it. Further, the police or the Civil Guard may of their own volition inform at some stage the detainee's family of his detention and whereabouts.

<sup>5</sup> Admittedly, a detainee held incommunicado has a possibility of contact (albeit extremely limited) with an officially appointed lawyer, and has a right to be examined by a state-employed doctor.

50. The right to the presence of a lawyer when making a statement to the police is an important safeguard. However, the core of the notion of access to legal assistance for persons in police custody is the possibility for a detainee to consult in private with a lawyer, and in particular during the period immediately following his loss of liberty.

A right of access to legal assistance loses much of its effectiveness if it consists only of the presence of a lawyer when a statement is made and recorded, together with the possibility of a private consultation between the detainee and his lawyer after the completion of those proceedings. It provides little protection against the possible intimidation or physical ill-treatment of the detainee during the period prior to the interview at which his statement is given.

51. The right of access to legal assistance of a detainee being held incommunicado is subject to special restrictions. As already indicated, he is not entitled to appoint a lawyer of his own choice. Further, he is not entitled to consult in private with the lawyer officially appointed on his behalf after he has made his statement.

That someone held incommunicado may not appoint a lawyer of his own choice is unexceptionable. However, the fact that the detainee may not consult in private with the lawyer appointed on his behalf either before or after the making of his statement is most unusual. Under such circumstances it is difficult to speak of an effective right of access to legal assistance; the officially appointed lawyer can best be described as an observer.

In the CPT's view, the requirement that the detainee's lawyer be officially appointed should make it possible to remove any risk of the legitimate needs of the investigation being prejudiced by an interview in private between the detainee and the lawyer.

52. In the light of the remarks under paragraphs 50 and 51, **the CPT recommends that a person taken into custody by the police or the Civil Guard be granted the right, as from the outset of the period of custody, to consult in private with a lawyer, it being understood that, in the case of a detainee held incommunicado, the lawyer shall be officially appointed on his behalf.**

This recommendation does not imply that a detainee should have the right to insist that an interview in progress be interrupted in order to allow him to consult in private with his lawyer.

53. The CPT's delegation heard many complaints about the general functioning of the system of officially appointed lawyers, from both law enforcement officials and prisoners.

Police officers told the delegation that the lawyer frequently arrived late, which meant that the taking of the detainee's statement was delayed unduly. Of course, if the lawyer did not arrive within 8 hours, the detainee could be asked whether he agreed to his statement being taken in the absence of a lawyer (Article 520 (4) of the Code of Criminal Procedure). However, the officers said they were reluctant to take statements in the absence of a lawyer, as such statements had little value before a court. Prisoners also complained about the late arrival of officially appointed lawyers. However, their criticism was mainly directed at the role played by the lawyers when they did arrive. It was alleged that they did not take part in the proceedings in an effective manner, usually remaining silent throughout - hence their nickname, "the stone guest".

**The CPT would like to receive the views of the Spanish authorities on the above-mentioned complaints and to be informed of any measures envisaged in this area.**

54. Finally, the CPT has some concern on the specific point of the notification of custody of foreign nationals. Article 520 (2) (d) of the Code of Criminal Procedure states that detained foreign nationals shall have the right to have the fact of their detention and their whereabouts made known to the consulate of their country. However, the CPT's delegation was told in one National Police station visited that the consulate was always informed of the detention, even if the detainee objected to this notification.

Such a notification against the wishes of the detainee could in certain circumstances have very unfavourable consequences. **The CPT recommends that appropriate steps be taken to ensure that the consulate of the country of a detained foreign national is only informed of his detention with the consent of the detainee.**

b. medical examination of detained persons

55. Article 520 (2) (f) of the Code of Criminal Procedure provides that detainees have the right to be examined by the forensic doctor or his deputy or, failing them, by another state-employed doctor.

The practice as regards medical examinations varied from place to place. In some places of detention there was apparently a systematic examination of all detainees by a police doctor, who would also be called in the event of a detainee requesting to see a doctor. The delegation consulted a number of medical reports drawn up by police doctors and noted that they contained merely a description of the physical findings on each detainee. No record was made of statements by the detainee, and no conclusions were reached. In other places, a detainee who requested a medical examination would be taken to the nearest hospital. Examination of detainees by a forensic doctor was, as far as the delegation could judge, a relatively rare occurrence.

The delegation was informed that detainees did not have a right to be examined by a doctor of their own choice, but that such an examination might be authorised in certain cases.



56. The CPT considers that a closer involvement of forensic doctors in the medical examination of categories of detainees who might be considered to be at particular risk of ill-treatment, or who frequently allege such treatment, would be desirable. Further, detainees should in principle have the right to be examined by a doctor of their own choice.

57. **The CPT recommends:**

- **that a person detained by the police or the Civil Guard for an offence to which Article 520 bis of the Code of Criminal Procedure applies be fully examined by the relevant forensic doctor both at the outset and at the end of his custody in each place of detention in which he is held;**
- **that a person detained by the police or the Civil Guard who is being held incommunicado and who requests a medical examination be examined by the relevant forensic doctor and, if he so wishes, by a doctor chosen from a list of doctors drawn up in agreement with the appropriate professional body;**
- **that a person detained by the police or the Civil Guard who is not being held incommunicado have the right to be examined by a doctor of his own choice, in addition to any examination by a state-employed doctor;**
- **that all medical examinations of detainees be conducted out of the hearing, and preferably out of the sight, of police or Civil Guard officers;**
- **that the results of all medical examinations as well as relevant statements by the detainee and the doctor's conclusions be formally recorded by the doctor and made available to the detainee.**

c. conduct of interrogations

58. From the delegation's talks with law enforcement officials, it transpired that they had not been provided with any formal rules or guidelines on the conduct of interrogations. Consequently, they would appear to have a considerable degree of discretion on such matters as informing the detainee of the identity of those present during the interview, the maximum possible length of a given interview without a break, rest periods between interviews, the places in which an interview may take place, whether the detainee may be required to stand while being questioned, the interviewing of persons who are under the influence of drugs or alcohol, etc. However, it should be recalled in this regard that save in the situations described in Article 520 (4) (second sub-paragraph) and (5) of the Code of Criminal Procedure, a lawyer appointed by the detainee himself or on his behalf by the Bar Association must be present when the detainee makes a statement.

59. **The CPT recommends the Spanish authorities:**

- **to draw up and publish a code of practice for the conduct of interrogations addressing inter alia the above-mentioned matters and providing for a record to be systematically kept of the times during which a detainee is questioned;**
  - **to explore the possibility of introducing a system of electronic recording of interrogations by law enforcement officials, providing all appropriate guarantees.**
- d. control by the competent judge of the situation of persons detained by the police or the Civil Guard for an offence to which Article 520 bis of the Code of Criminal Procedure applies

60. The CPT has taken note with interest of paragraph 3 of Article 520 bis, according to which "during detention, the judge may at all times request information on and ascertain the detainee's situation personally or by delegating responsibility to the Investigating Judge of the district in which the detainee is being held".

This is potentially a very important safeguard against ill-treatment; if fully exploited it would inter alia have a significant knock-on effect of a preventive nature. However, the CPT's delegation was informed that it was rare for a judge to have recourse to paragraph 3 of Article 520 bis, at least insofar as the possibility to visit detainees is concerned.

61. **The CPT considers that it would be very desirable for judges to have more frequent recourse to paragraph 3 of Article 520 bis and in particular to visit persons detained for offences to which that Article applies.**

- e. procedures vis-à-vis allegations of torture or other forms of ill-treatment

62. In the context of the prevention of torture and other forms of ill-treatment, it is essential to ensure that evidence obtained as a result of such treatment is not admitted in legal proceedings (see also Article 15 of the United Nations Convention against torture).

**The CPT would therefore like to receive information on the precise procedures followed by an investigating or trial judge when confronted with allegations by the accused that evidence presented against him was obtained as a result of torture or other forms of ill-treatment.**

63. Aside from the question of admissibility of evidence, it is important for allegations of torture and other forms of ill-treatment to be investigated diligently by the relevant authorities with a view to bringing to justice as rapidly as possible any law enforcement officials having engaged in such practices.

**The CPT would like to receive information on any special procedures that might exist in this area.**

f. custody records

64. The CPT's delegation examined the custody register and related papers in a number of the places of detention visited. It noted that certain aspects of a person's custody were not recorded (e.g. when fed) and, more importantly, that the information that was recorded tended to be spread over a variety of registers, files and documents.

65. The CPT considers that the fundamental safeguards granted to persons in police or Civil Guard custody would be usefully supplemented (and the work of police and Civil Guard officers quite possibly facilitated) if a single and comprehensive custody record were to exist for each person detained, on which would be recorded all aspects of his custody and action taken regarding them (when arrested and reasons for arrest; when told of rights; signs of injury, mental illness, etc; when next of kin/consulate and lawyer contacted and when visited by them; when fed; when interrogated; when transferred or released, etc). For various matters (for example, items in the persons possession, the fact of being told of one's rights and of invoking or waiving them), the signature of the detainee should be obtained and, if necessary, the absence of a signature explained. Further, the detainee's lawyer should have access to such a custody record.

**The CPT recommends that the Spanish authorities explore the possibility of developing such a single and comprehensive custody record.**

**B. Other establishments of a non-penitentiary character visited by the CPT's delegation**

**1. Detention Centre for foreigners at Moratalaz (Madrid)**

a. introduction

66. This centre, founded in November 1988, is one of six in Spain designed to hold foreigners detained in application of Article 26 (2) of the Aliens Law of 1 July 1985. Prior to the setting up of these centres, foreigners held under the alien's legislation were kept at police stations, pending the examination of their cases and their possible expulsion from Spain.

The CPT considers that the establishment of such centres for this category of persons is a very positive development, provided that they are properly equipped. Material conditions in police stations will frequently if not invariably be quite inadequate for the detention of someone for a period that might last up to 40 days.

67. In this connection, the CPT has already drawn attention to the need to improve the situation as regards the holding of persons detained under the aliens legislation at the National Police Station in Algeciras (see paragraphs 34 and 44). The CPT would also point out that its delegation met one person detained under Article 26 (2) of the Aliens Law who had been ordered to be held at Cádiz Prison (Puerto de Santa María II) "pending his committal to a non-penitentiary detention centre, as provided for in Article 26 (2)". This decision was contrary to the Aliens Law, which makes it clear that persons detained under Article 26 (2) should not be held in a prison.

**The above would indicate that the number and/or capacity of detention centres for foreigners in the south of Spain might usefully be increased.**

b. the situation in the Madrid Detention Centre

68. The centre was accommodating 53 detainees (capacity = 120), including three women, at the time of the delegation's visit. Consultation of the custody register showed that detainees stayed in the centre on average approximately two weeks.

69. No evidence was found of serious ill-treatment of persons held in the centre. However, many detainees complained that the police officers who supervised the centre frequently resorted to verbal abuse. Further, it was said that the officers sometimes used greater force than was necessary (e.g. blows with truncheons) when dealing with incidents between detainees.

The CPT's delegation itself remarked that the general atmosphere within the centre was tense.

70. Supervisory staff in a detention centre for foreigners have a particularly hard task. Firstly, there will obviously be problems of communication due to language barriers. Secondly, many of the foreigners in the centre will deeply resent being detained, given that they are not suspected of any criminal offence.

It follows that the police officers assigned to supervisory duties in such a centre should be chosen carefully. Reference has already been made to the importance of police officers possessing developed interpersonal communication skills; this is particularly important in a detention centre for foreigners. Moreover, the supervisory staff should have a knowledge of the cultural backgrounds of the detainees, and at least some of the staff should possess knowledge of relevant foreign languages (in particular arabic and french).

**The CPT recommends that the above factors be borne in mind when assigning police officers to supervisory duties in the Madrid Detention Centre for foreigners.**

**It is also recommended that the centre's internal rules and information notices, as well as those expressions most commonly used in daily interactions between detainees and supervisory staff, be translated into various languages.**

71. The CPT's delegation noticed that the police officers carried long truncheons in full view of the detainees. This is hardly conducive to good relations in the centre.

**The CPT recommends that the police officers do not carry truncheons in the centre or, at least, carry truncheons that can be and are hidden from view.**

**The CPT would add that trained police officers should not need to have recourse to truncheons to deal effectively with a fight between two detainees (which apparently is the most common type of incident).**

72. The material conditions of detention in the centre were on the whole good.

Sleeping quarters consisted of 22 cells, each measuring 3.60m x 3.85m (13.86 square metres), divided into female (8 cells) and male (14 cells) wings. 14 of the cells were equipped with 4 beds (i.e. two bunk beds) and were reasonably furnished (washbasin, mirror, chairs); the mattresses and bed clothes were in good condition.

Conditions were of a distinctly lower level in the 8 remaining cells (all in the male wing), which each contained 8 beds (4 bunk beds); these cells contained no washbasins or other furnishings. The Centre's Director indicated that he always tried to leave at least one of the beds, preferably two, empty. Admittedly, detainees spend most of the day out of their cells (i.e. 8.00 am to 12.00 pm, save a brief period in the middle of the day). Nevertheless, conditions in these cells must be very cramped whenever they are full.

**The CPT recommends that not more than six detainees be held to a cell.**

73. In all the cells, a high window provided a limited amount of natural light. Artificial light was very good, as was the ventilation.

None of the cells possessed a toilet facility. The delegation was informed that during periods when detainees were locked in their cells, they could ring the call bell to be released. The delegation heard no complaints from detainees about access to toilet facilities. **Nevertheless, the CPT would emphasise the importance of the detainees having ready access to toilet facilities at all times.**

Toilet, shower and laundry facilities in the centre were good.

74. Detainees had at their disposal a large recreation room with a television. Eating took place in a good-sized canteen. There was also a small room used as a chapel.

Detainees could receive visits from their family, lawyers, etc. The visiting facilities were quite adequate. A public telephone was also at the disposal of the detainees.

75. The centre possessed a well equipped medical room. However, some detainees complained about the level of medical care in the centre and more especially that they had to pay for some medicine.

**The CPT would like to be informed whether the latter allegation is true.**

76. The centre also possessed quite a large patio for outdoor exercise. In principle it was available for use from 10.30 am to 1.00 pm and from 6.00 pm to 9.00 pm. However, the delegation heard many complaints that access to the patio was very limited. Some detainees alleged that they were allowed onto the patio for about 15 minutes, two or three times a week. While disputing that access was as limited as that, supervisory staff indicated that due to a lack of staff, access to the patio was not as generous as might be wished.

**The CPT recommends the Spanish authorities to immediately take appropriate steps to improve access to the centre's patio. Each detainee should be able to spend at least one hour everyday on the patio, preferably much longer.**

77. More generally, the CPT was struck by the almost total absence of regime activities in the centre. Detainees could simply watch the television and, when allowed onto the patio, play with a ball.

Of course, given the relatively short period that people are held in the centre, it is impossible to envisage a developed scheme of regime activities. However, detainees could, for example, be provided with appropriate newspapers and magazines. Further, some organised group discussion or physical exercise activities might be offered to detainees.

**The CPT recommends that the Spanish authorities develop activities for detainees in the centre.**

78. To sum up, the material basis exists for a perfectly satisfactory detention centre at Moratalaz. Implementation of the recommendations set out above should enable the tension observed in the centre to be substantially reduced.

## 2. "Special transit room" at Barajas Airport

79. In the course of the delegation's discussions with the officer in charge at the National Police Station at Barajas Airport (cf. paragraph 33), it became apparent that foreign nationals might be detained at the airport elsewhere than in the station's cells. Foreigners who were expelled or extradited from Spain, or those convicted of offences in Spain who agreed to leave the country in return for a reduction in their sentence, were held in a special transit room pending their actual departure. Other persons might also be held in the room, such as foreigners refused entry to Spain (forged passport; insufficient means; etc.) or who were in the process of being expelled from one country to another and were in transit at Madrid Airport, if this was considered appropriate by the police; however, such categories of foreigners were often allowed to circulate freely in the normal transit area. The delegation was informed that asylum seekers would not be placed in the special transit room, and certainly there were no asylum seekers there at the time of the delegation's visit.

80. The special transit room was situated a short distance away from the police station, alongside the normal transit area. It measured 58 square metres, had good artificial lighting (as far as the delegation could judge, there would be little or no natural light), and was adequately ventilated. Occupants of the room had access to toilet and washing facilities (separate facilities for men and women), including a shower facility. The room contained 23 armchairs (several in rather poor condition) and some tables and chairs. There were also a certain number of stools which, when put with an armchair, enabled the user to stretch out. Further, there was a telephone in working order. The room was devoid of any other facilities (TV/radio/newspapers/drinks machine, etc.).

81. The delegation consulted a register which indicated that 712 people had been held in the room since the beginning of 1991. Police officers stated that there were rarely more than 5 people in the room at any one time; during the delegation's visit the room was occupied by four people. The delegation was informed that occupants of the room had to stay there the whole time pending their departure, and had no access to their luggage.

The register showed that a considerable number of people stayed in the room for up to three days, and that a few stayed for periods of up to (very exceptionally even exceeding) 10 days. Of the four people in the room at the time of the delegation's visit, two of them had been there for 10 days.

82. It is self-evident that every effort should be made to ensure that persons spend as little time as possible in the special transit room. Police officers assured the delegation that this was the case. It was also indicated that at least a part of the responsibility for the present situation lay with the airline companies.

83. It is not for the CPT to delve into the question why many people are obliged to spend a considerable number of days in the special transit room; **however, it considers that this is a question which needs to be examined by the relevant authorities as a matter of urgency.**

The CPT does wish to underline that whereas the special transit room is quite adequate for temporary holding purposes (i.e. detention for a matter of hours), the existing conditions of detention are not acceptable for stays in excess of 12 hours.

**The CPT recommends that anyone obliged to stay in the room for more than 12 hours:**

- **be provided with suitable means for sleeping (mattresses, blankets, etc.);**
- **be offered at least one hour's exercise in the open air per day;**
- **be granted access to their luggage for the purpose of changing clothes, etc.**

### **3. Cells at the Audiencia Nacional**

84. In the context of a visit to the Audiencia Nacional for discussions with a judge and a forensic doctor attached to the court, the delegation visited the cells in the basement of the court building.

85. The delegation was informed that detainees almost invariably spend only a few hours in the cells, pending their proceedings before the court, and that it was very exceptional for a detainee to stay overnight in the cells. This was borne out by the custody register.

86. The cell block was made up of 13 cells, the sizes of which varied between 5 and 7 square metres. There was good artificial lighting. The cells were quite adequate for the purpose for which they were used, i.e. temporary holding for a matter of hours.

**The CPT would only suggest that the ventilation in the cells be checked (at least three of the cells near the entrance and equipped with toilets had no evident means of ventilation), and that all the cells be equipped with a means of rest for persons detained (e.g. a wooden bench).**



## C. Prisons

### 1. General information

87. As already indicated in paragraph 3, the CPT's delegation examined the conditions of detention in five prisons: Algeciras, Bilbao (Basauri), Cádiz (Puerto de Santa María II), Madrid II (Alcalá-Meco) and Puerto de Santa María I.

Further, a sub-group of the delegation paid a short visit to the prison of Herrera de la Mancha and interviewed certain prisoners. The delegation in particular wished to speak to a prisoner held at the establishment who had been the subject some months earlier of a request for information under Article 30 of the CPT's Rules of Procedure. The sub-group also took the opportunity to interview certain other inmates, and more especially two who had been involved in a hostage-taking incident which had occurred at the prison shortly before the delegation's visit to Spain.

88. The prisons of Algeciras, Basauri and Puerto de Santa María II are all remand establishments ("establecimientos de preventivos") within the meaning of Article 7 of the General Organic Law on Prisons, i.e. they are in principle designed to accommodate persons awaiting trial or sentencing and prisoners serving short sentences.

**Algeciras Prison** was built in 1959. The major part of the inmate accommodation consists of medium-sized to large dormitories, a feature which distinguishes the establishment from the other prisons visited in Spain. The official capacity of the prison is 192<sup>6</sup>. At the outset of the delegation's visit it was holding 252 prisoners, including some 30 women accommodated in a distinct section of the establishment. Approximately two-thirds of the prisoners were on remand; among the sentenced prisoners, a handful were serving long sentences for terrorist offences. A significant proportion (about 30%) of the prison's inmates were foreigners, for the most part Moroccans.

**Basauri Prison** was also built in the 1950's. Unlike all the other establishments visited, it is of a radial design, four wings leading off at right angles from a central square. The prison has an official capacity of 210; on the first day of the delegation's visit it was holding 285 prisoners (all male). The inmates were divided evenly between those on remand and those sentenced. As regards prisoners in the latter group, most were serving sentences of less than six years; however, there were a certain number of inmates serving longer sentences for terrorist offences.

The prison of **Puerto de Santa María II** was built in 1984 and consists of five distinct units (modules), four for men and one for women. The establishment has an official capacity of 972, and at the outset of the delegation's visit was holding 954 inmates, including 72 women. Approximately 60% of the prisoners were on remand, and 40% sentenced. Most of the sentenced prisoners were serving relatively short sentences (4 to 5 years); however, a number of the female inmates were serving very long sentences. About one-third of the prisoners were foreigners, some 50% of them being Moroccans.

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<sup>6</sup> All official capacity figures are those provided to the CPT by the Spanish authorities in a letter dated 5 March 1991.

89. The Prison of **Alcalá-Meco** was built in 1982 and consists of 14 distinct units with an official total capacity of 528. It was originally designed to accommodate sentenced prisoners considered as dangerous. However, a decision was apparently taken in 1990 to modify the establishment's status. At present, the prison displays the characteristics both of a remand establishment and of an establishment for the serving of lengthy sentences.

At the outset of the delegation's visit, the prison was holding some 600 prisoners (all male), including approximately 100 prisoners in transit (a temporary situation caused by transformation work at Madrid I Prison). Of the 500 prisoners allocated to the establishment, roughly 55% were on remand and the remainder sentenced. The prison's 14 units were divided into two distinct areas (separated by a playing field), one area being in principle for those on remand and the other for sentenced prisoners. Despite the above-mentioned change of status, a fair number of the prisoners (50 +) were in the "dangerous" category (i.e. Grade 1 for sentenced prisoners; application of Article 10 (2) of the General Organic Law on Prisons, for remand prisoners). It should also be noted that a considerable number (about 100) of the establishment's prisoners were aged between 16 and 20.

90. The prison of **Puerto de Santa María I** was built in 1982 and is situated next to the prison of Puerto de Santa María II, with which it shares certain facilities. The establishment is designed to accommodate sentenced male prisoners, in particular those classified as "dangerous". It consists of four distinct units with a total official capacity of 468 prisoners. At the time of the delegation's visit there were approximately 360 inmates, two-thirds of whom were classified in Grade 1.

## 2. Torture and physical ill-treatment

### a. situation in the establishments visited

#### i. *Alcalá-Meco Prison*

91. The CPT's delegation heard a considerable number of allegations that prisoners in Alcalá-Meco Prison had in the past been subjected to physical ill-treatment by prison officers; the ill-treatment as alleged could in some instances have well amounted to torture. The allegations were made not only by prisoners spoken to in Alcalá-Meco but also by some prisoners interviewed elsewhere who had previously been held in the establishment.

The ill-treatment alleged included the following forms: incapacitating gas (see also paragraph 107) would be sprayed into the prisoner's cell, following which prison officers equipped with anti-gas helmets would enter the cell and beat the prisoner; the prisoner would be handcuffed or chained to his cell bed or table, metal rings under these fittings being exploited for this purpose. It was said that these two forms of ill-treatment were often combined.

However, there was a consensus among the prisoners spoken to that the situation had improved significantly in recent times. Examples of physical ill-treatment were now less frequent and the general climate within the prison was much better. Nevertheless, isolated incidents of such treatment apparently still occurred, especially in the event of disobedience.

92. Senior staff and prison officers with whom the delegation spoke admitted that a "tough" regime had been applied in the prison during the period when it catered practically exclusively for prisoners categorised as dangerous, with a particular group of officers taking the lead in this respect. The change in the prison's status (see paragraph 89) had provided the opportunity to address this situation, and a number of the officers in question had been either transferred elsewhere or suspended.

93. Prior to the delegation's visit to Spain, the CPT had received some disturbing reports about the situation in Alcalá-Meco Prison. It has noted the positive evolution in that situation, which is indicative of the intention of the Spanish authorities to ensure full compliance with Article 6 of the General Organic Law on Prisons and Article 5 of the Prison Rules. The Committee trusts that this improvement will be consolidated in the months ahead.

94. The CPT shall later on in this section of the report make certain remarks of a general nature (see paragraphs 104, 106 and 107) which are relevant to Alcalá-Meco. However, it wishes here to make two specific points concerning the prison.

Firstly, its delegation observed that the cell beds and tables were made of concrete, and that metal rings were inserted in the underside of the concrete blocks. These rings had apparently been designed to facilitate the construction of the building. They now serve no legitimate purpose and, if broken off, could be a dangerous weapon in the hands of a prisoner. **The CPT recommends that the above-mentioned rings be removed.**

Secondly, the allegations of physical ill-treatment in the prison that are still heard tend to concern in particular young prisoners. **The CPT recommends that the Spanish authorities examine whether prison officers in the young offender units are on occasion abusing their authority and, if necessary, take remedial action (see also paragraph 163).**

*ii. Prisons of Puerto de Santa María I and II*

95. In both of these prisons, the CPT's delegation heard numerous allegations of physical ill-treatment, including beatings with truncheons. It was also alleged that it was commonplace for prisoners placed in isolation, at some stage to be handcuffed or tied by their hands and feet to the cell bed. Some of the beds appeared to have been modified to facilitate this procedure.

96. Despite these and other allegations, the CPT's delegation was satisfied that there was no systematic ill-treatment of prisoners. However, it found a number of individual cases which suggested that prison officers had used more force than was reasonably necessary when faced with violent or disturbed behaviour. In one case there were clear indications, including medical evidence, that a prisoner had been severely ill-treated. Further, the delegation detected a tendency for staff in Unit 2 of Puerto de Santa María I Prison to overreact whenever a prisoner failed to comply in some respect with regulations or instructions.

97. As regards more particularly the use of physical restraints, the delegation was struck by the case of a prisoner in the prison of Puerto de Santa María I. A deputy Governor informed the delegation that during the afternoon of 23 December 1990 the person concerned had been put in an isolation cell and handcuffed as a result of his aggressive behaviour. The prisoner had apparently remained handcuffed for a period of some 29 hours (excluding brief periods to allow him to eat and comply with the needs of nature), the handcuffs being finally removed at 9.00pm on 24 December 1990 (the prisoner committed suicide the following day). The CPT must emphasise that the application of a physical restraint for such a length of time is totally unacceptable.

The delegation also noted the case of an inmate in the Prison of Puerto de Santa María II who, despite having been previously diagnosed as an epileptic, was placed in an isolation cell following aggressive behaviour and handcuffed by his hands and feet to the cell bed, the latter action being taken with the consent of a prison doctor. This is a procedure that carries great risks for a person with such a medical condition.

**98. The CPT recommends the Spanish authorities to take appropriate measures to ensure that Article 5 of the Prison Rules is fully complied with in the prisons of Puerto de Santa María I and II.**

With regard to instruments of physical restraint, their use will on occasion be necessary for the purpose of controlling violent or disturbed prisoners. However, recourse to them should be the exception rather than the rule. **It is recommended that the attention of all relevant staff at the above-mentioned prisons be drawn to the following:**

- **instruments of physical restraint should be resorted to only when all other methods of control fail or when justified on medical grounds;**
- **a prisoner to whom an instrument of restraint has been applied should be kept under constant and adequate custodial surveillance or medical supervision, as the case may be;**
- **instruments of restraint should be removed at the earliest possible opportunity;**
- **instruments of restraint should never be applied, or their application prolonged, as a punishment.**

*iii. Algeciras and Basauri Prisons*

99. The CPT's delegation heard very few allegations of physical ill-treatment in either of these establishments.

At Basauri Prison, some allegations were heard of prisoners being hit with a truncheon or kicked by prison officers. However, as far as the delegation could judge, such examples of physical ill-treatment, even if true, were isolated incidents. Of course, such treatment, even if it were to occur only rarely, would be quite unacceptable.

*iv. Herrera de la Mancha Prison*

100. On account of the briefness and particular purpose of the visit to Herrera de la Mancha Prison (see paragraph 87), the CPT's delegation was not in a position to form a judgment as to the general situation within the establishment, whether as regards the existence of torture or physical ill-treatment or other matters. However, the CPT must express concern about certain allegations heard by the delegation sub-group which went to the prison, concerning events following the ending of the hostage-taking incident that occurred between 18 to 19 March 1991.

101. The subgroup interviewed two prisoners who had participated in the above-mentioned hostage taking. They both alleged inter alia that after they had been overpowered and the incident brought to an end, they were:

- severely beaten by Civil Guard officers, who had intervened to deal with the incident;
- subsequently confined to a cell for three to four days, without food or clothes, and handcuffed throughout to a bed without a mattress, at no time being released for the purpose of complying with the needs of nature.

One of the prisoners showed to the subgroup two letters dated respectively 3 and 4 April 1991 sent to the Spanish Constitutional Court and to the supervisory judge responsible for Herrera de la Mancha, in which these allegations were set out.

The Spanish authorities subsequently forwarded the medical files of the two prisoners to one of the delegation's medical doctors. They indicated inter alia that the prisoners had not been medically examined after the incident had been brought to an end (see also paragraph 106); one of the prisoners was medically examined several days afterwards.

102. After serious acts of violence by prisoners, in particular those in which prison officers are taken hostage and/or injured, there will inevitably be a great temptation to exact summary retribution. However, the ability to resist that temptation is precisely one of the hallmarks of a professional prison officer or law enforcement official.

**103. The CPT requests the Spanish authorities to provide full details of the examination of the allegations made by the above-mentioned prisoners concerning their treatment following the end of the hostage-taking incident as well as of any other proceedings initiated in respect of the hostage taking and related incidents.**

b. prison staff-inmate relations

104. The fostering of constructive as opposed to confrontational relations between prison staff and inmates will serve to lower the tension inherent in any prison environment and by the same token significantly reduce the likelihood of violent incidents and associated ill-treatment.

**In this connection, the CPT would underline that the recommendations already made in paragraph 29 on the subject of interpersonal communication skills apply equally to prison staff.** The possession of such skills will often enable a prison officer to defuse a tense situation and thereby avoid the need to have recourse to physical force.

105. The CPT's delegation was impressed by the prison staff-inmate relations at Algeciras Prison. From both its own observations and the remarks of the large majority of inmates, it was clear that despite the relatively poor material conditions of detention, prisoners and prison officers on the whole got on well with each other. However, it should be added that some foreign prisoners alleged that they were frequently the subject of verbal abuse by prison officers.

Prison staff-inmate relations at Basauri Prison also appeared to be reasonably satisfactory, though there was a generalised complaint that the system of searches, and more particularly of strip searches, applied within the establishment was excessive.

Relations between staff and inmates at Alcalá-Meco Prison varied from unit to unit. In some units, a certain degree of mistrust could be detected in the relations, whereas in others, staff and inmates appeared to be on reasonably good terms. It should be added that in a few areas, such as Unit 7, the amount of contact between staff and inmates was so limited that the issue of interpersonal relations scarcely arose.

**Prison staff-inmate relations were not good at the Prison of Puerto de Santa María II;** there was a clear absence of dialogue between the two sides. A very high number of prisoners complained about verbal abuse and insults directed at them by prison officers. Moreover, the unfriendly attitude displayed by female staff in the women's section was particularly striking.

**The CPT must also express serious concern about the considerable tension observed by its delegation in the prison of Puerto de Santa María I.** Of course, the development of constructive prison staff-inmate relations will be extremely difficult in an establishment that is used to accommodate prisoners considered as dangerous, but at the same time is all the more important in such an establishment in view of the fact that a good internal climate is a necessary prerequisite for the maintenance of effective control and security. The tension observed was not limited to the staff-inmate sphere, but extended to relations between the staff and management. Underlying it was perhaps the fundamental issue of the regime to be applied within the prison (see paragraphs 112 and 162).

**The CPT recommends that appropriate steps be taken to improve prison staff-inmate relations at the prisons of Puerto de Santa María I and II.**

c. means of coercion

106. Article 45 of the General Organic Law on Prisons defines the different situations in which means of coercion may be resorted to by prison officers, and provides for certain safeguards in this respect. As for the actual means of coercion that may be employed, they are spelt out in Article 123 (1) of the Prison Rules (provisional isolation, physical force, truncheons, "adequate" sprays ("los sprays de acción adecuada") and handcuffs).

**In this context the CPT recommends:**

- **that a prisoner against whom means of coercion have been used, have the right to be immediately examined and, if necessary, treated by a medical doctor;**
- **that this medical examination be conducted out of the hearing, and preferably out of the sight, of non-medical staff;**
- **that the results of the medical examination as well as relevant statements by the prisoner and the doctor's conclusions be formally recorded by the doctor and made available to the prisoner.**

**Further, it recommends that a central register be kept in each prison containing full information on every instance of the use of means of coercion.**

107. As already mentioned, "adequate" sprays feature among the authorised means of coercion. The CPT's delegation examined the spray containers in certain of the establishments visited; the contents were indicated as being 0.8% ortho-chlorobenzalmalonitrile (i.e. CS gas); 20% trichloroetileno.

Incapacitating sprays are a means of coercion which lend themselves to abusive use. Further, prison officers in many other countries appear to be able to perform their duties quite effectively without having recourse to this type of means of coercion, in particular when it is a question of exercising control over individual prisoners.

**The CPT recommends the Spanish authorities to remove such sprays from the list of means of coercion that may be resorted to by prison officers.**

108. Finally, when examining two metal cupboards at the prison of Puerto de Santa María I used for storing different means of coercion and associated equipment, the delegation discovered a number of long batons capable of delivering an electric shock; one of the batons was loaded with the necessary batteries.

**The CPT would like to be informed of the circumstances under which the use of such batons is authorised, and of who may use them.**

### **3. Inhuman or degrading treatment arising from the conditions of detention**

- a. treatment of prisoners considered as "dangerous" or as "unadapted to an ordinary prison regime"

109. In every country there will be a certain number of so-called "dangerous" prisoners (a notion which covers a variety of individuals) in respect of whom special conditions of custody are required. This group of prisoners will (or at least should, if the classification system is operating satisfactorily) represent a very small proportion of the overall prison population. However, it is a group that is of particular concern to the CPT, in view of the fact that the need to take exceptional measures concerning such prisoners brings with it a greater risk of inhuman treatment than is the case with the average prisoner.

The dangers involved in this area are well described in the following extract from the Explanatory Memorandum to the Recommendation (No. R (82)17) on the custody and treatment of dangerous prisoners adopted by the Committee of Ministers of the Council of Europe on 24 September 1982:

"43. Human dignity is to be respected notwithstanding criminality or dangerousness and if human persons have to be imprisoned in circumstances of greater severity than the conventional, every effort should be made, subject to the requirements of safe custody, good order and security and the requirements of community well-being, to ensure that living environment and conditions offset the deleterious effects - decreased mental efficiency, depression, anxiety, aggressiveness, neurosis, negative values, altered biorhythms - of the severer custodial situation. In the most serious instances prisoners regress to a merely vegetative life. Generally the impairment may be reversible but if imprisonment, especially in maximum security, is prolonged, perception of time and space and self can be permanently and seriously impaired - 'annihilation of personality'."

110. Under the prisoner grading system operated in Spain, sentenced prisoners who are considered as dangerous or unadapted to an ordinary prison regime are placed in Grade 1. The CPT's delegation learned in the course of its visit that this grade was itself divided into three phases. Prisoners placed in Grade 1 (1) are in principle subject to a very restricted regime: 22 hours a day alone in their cells; no association with other prisoners during out-of-cell time; any work/education to take place in the prisoner's cell; restrictions on visits. In Grade 1 (2) the above regime is relaxed somewhat and, in particular, out-of-cell time is extended to four hours. In Grade 1 (3) the prisoner's regime is much closer to that of an ordinary prisoner, and indeed this third phase acts as a stepping stone to Grade 2 status.

The delegation was also informed that on the basis of Article 10 (2) of the General Organic Law on Prisons, an analogous system was applied to remand prisoners considered as falling within the above-mentioned categories.



111. The CPT's delegation met a number of Grade 1 prisoners in the course of its visits. It observed that the conditions of prisoners in phases 1 and 2 varied from establishment to establishment, and on occasion from prisoner to prisoner in the same establishment.

For example, the delegation met some Grade 1 (1) prisoners whose regime was precisely as described in the preceding paragraph. Interestingly, a prison governor took pains to point out that one such prisoner was not undergoing punishment. This explanation was necessary as the difference between the prisoner's situation and that of a prisoner placed in solitary confinement as a punishment was not immediately evident. Both would be held in the same section of the prison with comparable material conditions; the distinction between the respective positions of the two prisoners turned essentially on the amount of out-of-cell time - two hours for the Grade 1 (1) prisoner, one hour for the prisoner undergoing punishment. By contrast, some Grade 1 (1) prisoners were in a position, when on exercise, to talk freely with other prisoners who were in their cells (the cell windows of the units in question overlooked the patio, and verbal contacts between the prisoners were clearly tolerated). Moreover, in some establishments, at least some of the Grade 1 (1) prisoners took their exercise in groups, and there were also opportunities for contacts between the prisoners within their units.

Certain Grade 1 (1) and 1 (2) prisoners themselves underlined the differences in the regimes they had experienced in the prisons where they had been held.

112. However, a common feature in all establishments was the penury of regime activities for Grade 1 (1) and 1 (2) prisoners. The delegation had been told by prison staff that possibilities for in-cell activities existed, but in reality practically all the Grade 1 (1) and 1 (2) prisoners met by the delegation had only borrowed books and on occasion a radio as sources of diversion. This enforced idleness was most striking in Unit 2 at the Prison of Puerto de Santa María I. Grade 1 prisoners spoken to there expressed a feeling of having been abandoned.

The above situation is all the more serious in view of the length of time that prisoners may be classified in phases 1 or 2. A significant proportion of the Grade 1 (1) and 1 (2) inmates spoken to had had that classification for more than a year, and some for considerably longer.

113. The strictest forms of Grade 1 regime observed by the delegation are scarcely distinguishable from solitary confinement as a punishment; moreover, unlike the latter, they are not subject to a maximum time limit.

The delegation met certain Grade 1 prisoners who had for very long periods been subject to a regime of isolation and were held under austere material conditions of detention with little or nothing by way of activity; in the CPT's view, this constitutes inhuman treatment.

**The CPT wishes to recall in this context the generally recognised principle that people are sent to prison as a punishment, not for punishment. It recommends the Spanish authorities to take steps as a matter of urgency to ensure:**

- **that the material conditions of detention of a prisoner held in isolation as a result of his Grade 1 status are clearly better than those of a prisoner undergoing solitary confinement as a punishment;**
- **that all forms of isolation of Grade 1 prisoners are as short as possible.**

114. The less stringent forms of regime for Grade 1 (1) and 1 (2) prisoners observed by the CPT's delegation are also quite unsatisfactory. The notion of the "treatment" of such prisoners, albeit formally recognised in the Prison Rules (see Article 46), appears to have been seriously undermined in practice. This will inter alia make it very difficult for prisoners to demonstrate the progress required for being placed under a normal regime.

**The CPT recommends the Spanish authorities to review as a matter of urgency the regimes applied to Grade 1 prisoners, in particular those in phases 1 and 2, with a view to developing purposeful activities for such prisoners.**

115. The placing of prisoners in Grade 1 has to be reviewed every six months, and in some establishments such reviews apparently take place at shorter intervals. The delegation was informed by the members of one treatment board that prisoners were informed in writing of their initial classification and of any changes subsequently made to it; however, the reasons for the classification and for subsequent changes were always given orally.

Many Grade 1 prisoners spoken to by the delegation complained that they were not given the reasons for their classification in Grade 1 or kept informed of reviews of that status.

116. The CPT considers that Grade 1 prisoners (and prisoners in general) should be kept fully informed about their classification and more particularly of the reasons for it; this will inter alia enable them to make effective use of avenues for challenging that classification.

**It recommends:**

- **that prisoners placed in Grade 1 or retrograded to a more severe phase within that grade be informed in writing of the reasons for that measure, except when security requirements dictate otherwise;**
- **that a prisoner in respect of whom such a measure is envisaged be given an opportunity to express his views on the matter;**
- **that prisoners in Grade 1 be kept informed of the outcome of reviews of their classification, irrespective of any change in that classification;**
- **that the classification of prisoners in Grade 1 be reviewed at least every three months.**

b. overcrowding

117. Overcrowding is an issue of direct relevance to the CPT's mandate. All the services and activities within a prison will be adversely affected if it is required to cater for more prisoners than it was designed to accommodate; the overall quality of life in the establishment will be lowered, perhaps significantly. Moreover, the level of overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint.

In this connection it should be recalled that Article 19 of the Spanish General Organic Law on Prisons establishes the general principle of one prisoner per cell.

118. There was no overcrowding at the prisons of **Alcalá-Meco** and **Puerto de Santa María I**. Practically all prisoners had their own cell (the only significant exception being the prisoners in transit at Alcalá-Meco, who were held two to a cell), the cells measuring in the order of 9 square metres.

119. The inmate population at **Basauri Prison** at the time of the delegation's visit was about 40% in excess of its official capacity (see paragraph 88). The result was cramped, occasionally very cramped, conditions in much of the cellular accommodation. The majority of the inmates were held 2, 3 or 4 to a cell, the cells varying in size between 10 to 18 square metres (including the sanitary annex). The physical conditions of detention were far from ideal, but could not fairly be described as intolerable. It should be added that prisoners enjoyed a considerable amount of out-of-cell time, being able to move freely within the prison throughout a large part of the day. Inevitably, the overcrowding strained already limited regime (and in particular work) activities for prisoners (see paragraph 160).

**Clearly, steps designed to contain the overcrowding of Basauri Prison and in due course to reduce the inmate population should be taken.**

120. At **Algeciras Prison**, the inmate population (252) at the outset of the delegation's visit was approximately 30% in excess of the establishment's official capacity. However, consultation of the prisoner transfer register showed that very high levels of overcrowding had existed in the prison in the recent past. Throughout most of 1990 the number of prisoners had fluctuated between 300 and 350, peaking in mid-October 1990 at 380 i.e. double the establishment's official capacity. Severe overcrowding had persisted in the first few months of 1991. However, during the second half of March 1991 the inmate population had fallen noticeably, by approximately 100; the CPT trusts that this was not a temporary phenomenon.

121. Most male inmates were accommodated in three dormitories or a set of 19 cells. At the time of the delegation's visit, the largest dormitory (approximately 200 square metres) was accommodating 50 or so Moroccan prisoners celebrating the Ramadan; there was adequate space for the number held. However, the Prison Governor stated that up to 120 prisoners had been held in the dormitory in the past, and prison officer representatives claimed that the figure had been as high as 160.

Physical conditions in the two other dormitories (48 prisoners for 135 square metres; 16 prisoners for 35 square metres) were much less favourable, and comparable conditions were observed in the dormitories of the prison's female section. Prisoners in some of the prison's cells (up to 4 prisoners for 12 square metres) also had cramped accommodation.

122. Large capacity dormitories are not a satisfactory means of accommodating inmates. They inevitably imply a lack of privacy for prisoners in their everyday lives. Further, the risk of intimidation and violence is very high, in particular in dormitories such as those at Algeciras which have no means of direct supervision from outside. The CPT was informed that plans were under consideration to transform the dormitories into cellular accommodation; **it considers that implementation of those plans should be accorded a high priority.**

123. Pending the transformation of the prison's dormitories, the CPT considers that the establishment's prisoner population must be the subject of particular attention. Dormitories are, by their very nature, easily exploited insofar as numbers accommodated is concerned, and this is clearly what has happened in the past. To hold 120 inmates in the largest dormitory, for example, is not acceptable to the CPT; there is neither the space nor the facilities for so many people.

**The CPT recommends that with its existing dormitory and cellular accommodation, the inmate population at Algeciras Prison be kept under 250 and as close as possible to 200.**

124. Special mention must be made of the extremely poor conditions in the dormitory at Algeciras Prison, used as sleeping quarters for prisoners enjoying a regime of semi-liberty (in particular those allowed to work outside the prison). Beds for 27 were crammed into a space of approximately 40 square metres, and the adjacent washing and sanitary facilities consisted of 1 toilet, 1 shower and two washbasins. During the week, the prisoners concerned would spend 10 hours out of 24 locked in the dormitory.

**The CPT recommends that steps be taken without delay to improve conditions at Algeciras Prison for prisoners benefitting from a regime of semi-liberty.**

125. As already indicated, the **Prison of Puerto de Santa María II** was holding 954 inmates at the outset of the delegation's visit, a figure slightly below its official capacity. However, it was probably the most overcrowded establishment seen by the delegation in Spain. This raises the question of how the official capacity has been worked out. Apparently, it is calculated inter alia on the basis that the standard cells of 9 square metres are for three prisoners.

Prison officer representatives told the delegation that when the establishment had been built in 1984, it had been intended that the cells would each accommodate one prisoner. And this seems only logical in view of Article 19 of the General Organic Law on Prisons, which dates from 1979.

126. In any event, the above-mentioned cells offer unduly cramped accommodation for three persons. It could, of course, be argued that prisoners have considerable out-of-cell time; however, such a level of accommodation should certainly not be the norm throughout the prison.

**The CPT recommends:**

- **that serious efforts be made to reduce the level of occupation of the cells measuring 9 square metres to two prisoners per cell<sup>7</sup>;**
- **that for so long as the cells are occupied by more than one person, a partition or other means of offering a suitable degree of privacy be installed around the toilet facility in the cells.**

127. Overcrowding in the women's unit of the prison was of an extraordinary level. Whereas the official capacity of the unit was 46 (3 to a cell in the cells measuring 9 square metres, 5 to a cell in the cells measuring 18 square metres, plus 5 isolation cells), it was accommodating 72 prisoners at the time of the delegation's visit. Moreover, the delegation was informed that this was not an exceptional situation. The conditions of detention of the women concerned were deplorable.

Over and above the recommendations already made in paragraph 126, **the CPT recommends the Spanish authorities to take steps immediately to reduce substantially the number of prisoners held in the existing facilities of the women's unit at the prison of Puerto de Santa María II.**

**Further, it recommends that the facilities for women in the unit who have young children with them be significantly improved; ideally, a distinct mother/baby section should be created.**

128. Looking beyond the establishments visited by its delegation to the problem of overcrowding in general, the CPT has received some information from the Spanish authorities concerning prisons about to be opened, presently under construction or planned. Moreover, it understands that certain measures have been adopted or are envisaged with a view to reducing the number of persons sent to prison. However, the CPT would like to get a clearer picture of the scale of the problem of overcrowding in Spanish prisons and of the strategy and precise plans of the Spanish authorities for dealing with it.

**The CPT would therefore be grateful for any further information that the Spanish authorities could provide on this subject.**

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<sup>7</sup> Naturally, this is without prejudice to the objective of complying in due course with the principle laid down in Article 19 of the General Organic Law on Prisons.

c. transport of prisoners

129. The CPT's delegation heard allegations from several sources that the physical conditions in the vehicles used for transporting prisoners were frequently very poor, in particular in the vehicles used for medium to long distance travel.

130. The CPT's delegation inspected two prisoner transport vans (apparently not among the most recent models) at respectively Alcalá-Meco prison and the prison of Puerto de Santa María II; one of them had just completed a lengthy journey. The prisoner accommodation consisted of eight compartments (four on each side of the van), each measuring 0.7 square metres (1m x 0.7m). There were seats for two prisoners in each compartment. No windows were installed in the compartments, and ventilation and lighting appeared to be inadequate. Further, there was no evident means of ensuring the rapid release of prisoners from their locked compartments in the event of an accident. Two members of the delegation installed themselves in one of the compartments; it was found to be extremely cramped and uncomfortable. **Certainly, such a van should not be used for the long distance transport of prisoners or for the transport over any distance of a sick prisoner.**

It should be added that the delegation also inspected two vans at Algeciras Prison used for transporting prisoners over short distances. They were quite acceptable.

131. **The CPT recommends the Spanish authorities to review the adequacy:**

- **of space, lighting and ventilation in the vehicles used for prisoner transport, in particular in those used for long distance travel;**
- **of means to ensure the safety of prisoners in the event of such a vehicle being involved in an accident.**

**Further, the CPT would like to receive any regulations that might exist concerning the characteristics of vans used for transporting prisoners as well as any court judgments that might have been given on this subject.**

#### 4. Medical services in the prisons visited and related issues

##### a. introduction

132. The provision of a satisfactory level of health care in a prison is always a demanding task; and when a prison is overcrowded and/or has very few regime activities, that task is rendered all the more difficult. The physical and psychological well-being of a prisoner - already at risk by virtue of the very fact of incarceration - will be further prejudiced under such conditions. The health care services of the prison concerned will tend to become overwhelmed by day-to-day requests for medical attention and have no time to pursue a health policy of a preventive nature.

133. In this regard it should be recalled that several of the establishments visited by the CPT's delegation were overcrowded; moreover, there was considerable room for improvement in all of the establishments as regards regime activities (see Section 5.a. below). For so long as this situation exists, prison medical services will have difficulty in attaining the objective of the "prevention of illness and accidents" (see Article 138 of the Prison Rules).

##### b. staff and facilities

134. The CPT's delegation found that the establishments visited had for the most part adequate (and in some cases very satisfactory) numbers of medical and nursing staff. However, the existence of a vacant post for a doctor at Algeciras Prison meant that the doctor in post was somewhat overworked. **It would be appropriate to have the vacant post filled as soon as possible.**

Further, the delegation heard some complaints from medical staff that they tended to get bogged down with paperwork due to a lack of auxiliary staff.

135. Medical facilities at the establishments visited were also quite satisfactory.

136. The delegation was informed that prison doctors were required to have some knowledge of psychiatry. Nevertheless, the delegation gained the impression that not all medical staff had had sufficient training in psychiatry and neurology.

**The CPT would appreciate receiving information on the training received by prison doctors in these areas.**

c. general medical care

137. The Prison Rules stipulate that all newly arrived prisoners shall be examined by a prison doctor with a view to evaluating his physical and mental state of health. The delegation was satisfied that this examination was in fact being carried out.

The delegation explored in some detail at the establishments visited the actual practice as regards the medical examination of new prisoners. The standard medical record employed for this purpose was sufficient. Further, the delegation observed at Basauri Prison that the doctor interviewed the prisoner in the absence of non-medical personnel, but in the presence of a nurse - this approach represents good practice and should be followed in all establishments.

138. Newly arrived prisoners were offered inter alia an HIV blood test, and apparently most of them took up the offer. In this connection, **the CPT would stress the importance of adequate prisoner counselling both before and - if appropriate - after the test;** its delegation observed that the quality and amount of counselling in this area varied considerably from prison to prison.

More generally, the CPT considers that an ongoing information programme for prisoners in general and prison staff on the subject of AIDS (transmission risks and means of prevention) is most important. In this connection, the CPT welcomes the practice followed in Spanish prisons of giving condoms and razors to prisoners at regular intervals.

139. The level of medical care for inpatients in the prison infirmaries appeared to be satisfactory, and most of the inpatients spoken to were content with their treatment.

The delegation was particularly impressed by the standard of care of AIDS patients in some of the infirmaries.

140. By contrast, the delegation heard a large number of complaints in practically all the establishments visited about the quality of ambulant care. One very frequent complaint was that prisoners reporting sick were not properly examined by a doctor, especially those who were seen by the doctor in their own units. The doctor apparently examined his patient "at a distance", making no physical contact with him; further, it was said that doctors made no effort to explain to prisoners the nature of their ailments or of the treatment envisaged. The number and consistency of these complaints lend them considerable credibility, and they were also confirmed to some extent by certain of the delegation's own observations.

**The CPT wishes to underline that the fact that medical care is provided within a prison environment does not in any way justify dispensing with efforts to establish a satisfactory doctor/patient relationship in accordance with good medical ethics.**

141. Of course, in exceptional cases security considerations might require special precautions to be taken. In such cases, the CPT considers that it would be preferable for medical examinations to take place in the prison infirmary (where it should be relatively straightforward to organise adequate supervision) rather than in the prisoner's cell or unit under restricted conditions ruling out direct doctor-patient contact.



142. **The CPT would also stress the importance of a good follow-up by medical staff of outpatient treatment; in many cases it is not sufficient for follow-up care to depend upon the initiative being taken by the prisoner (see also paragraph 138).**

143. There was a unanimous condemnation by prisoners of the dental services provided. They alleged in particular that a decaying tooth would invariably be extracted rather than treated. The delegation met one prisoner aged 26 who had only 5 teeth remaining; these teeth were examined by one of the delegation's doctors and were found to show no clinical signs of disease in the soft tissue of the gums. The prisoner alleged that he had had a full set of teeth when first sent to prison in November 1987, but that his teeth had decayed and been progressively removed by prison dentists; this allegation was supported by his medical record. Medical staff confirmed that no caries treatment (fillings) was available free of charge; if a prisoner wanted such treatment he had to be in a position to pay for it.

In the CPT's opinion, a prison dental service based on tooth extraction rather than the treatment of tooth decay is no longer acceptable in modern times.

144. The CPT's delegation was also struck by the apparent haste with which prison dentists worked. To give an example, it noted from the surgery register in the prison of Puerto de Santa María II that on 3 April 1991 a prison dentist had treated 35 people in approximately 5½ hours, performing inter alia 67 tooth extractions.

145. **The CPT recommends that the Spanish authorities take steps without delay to improve dental care in prisons and in particular to provide caries treatment free of charge.**

146. The delegation was concerned about the adequacy of night cover in certain of the establishments visited, for example at Algeciras Prison. Arrangements existed whereby a doctor was always readily contactable, but there might be no one present with the necessary knowledge to give immediate care.

**The CPT recommends the Spanish authorities to take steps to ensure that someone competent to provide first aid is always present on prison premises, preferably a person with a recognised nursing qualification.**

Of course, the situation which prevails at Alcalá-Meco Prison - where a doctor is present on the prison premises on a 24 hour basis - represents the ideal position, though this is not a necessity in every prison.

d. access to specialist care

147. The prison of Alcalá-Meco clearly benefitted from its proximity to the major prison hospital centre at Madrid I Prison, to which prisoners could be sent for specialist care. Further, consultants in various fields (e.g. psychiatry, stomatology) visited the establishment on certain days.

148. The other prisons visited had to rely more heavily on visiting consultants and access to outside civil hospitals for specialist care.

In this regard, **the delegation heard that it was frequently difficult to persuade consultant psychiatrists to visit prison establishments.** Access to the services of a neurologist was also problematic, apparently due to a general shortage of specialists in this field in Spain.

149. The delegation found clear indications that the prison medical service/civil hospital interface was not satisfactory. It heard numerous complaints of long waiting lists for appointments with consultants in civil hospitals and of serious difficulties encountered in obtaining a bed in such a hospital for a prisoner. It is apparently quite frequent for a prisoner transferred to a civil hospital to be returned almost immediately to the prison with a note reading "Patient X needs to be admitted to a hospital. Due to a lack of beds he must be transferred elsewhere".

These types of problem are not unique to Spain and there is no straightforward answer to them. The difficulties encountered may well be a reflection of difficulties within the public health service as a whole. **The CPT can only invite the Spanish authorities to intensify efforts to establish a satisfactory level of co-operation between prison medical services and the civil hospital structure.**

150. The CPT's delegation was also informed of certain problems concerning the actual transfer of sick prisoners to hospital and the guarding of such prisoners while in hospital, tasks which are the responsibility of the Civil Guard.

Firstly, the delegation was told that the means of transport employed for taking prisoners to and from an outside hospital did not always fully take into account their medical condition. For example, a sick prisoner might, it was alleged, be transported together with prisoners going to court or other prisons in the sort of vehicle described in paragraph 130. Further, on occasion no means of transport whatsoever were available, with the result that appointments with specialists had to be cancelled or the transfer of a prisoner to a hospital bed delayed.

The CPT is convinced that a more efficient management of resources would enable such logistical problems to be overcome; **it recommends the Spanish authorities to review the existing arrangements for the transporting of prisoners to hospitals.**

Secondly, a sick prisoner transferred to hospital might be handcuffed or tied to his bed during the whole or a part of his stay in hospital, depending on his category. Such custodial arrangements are quite unacceptable to the CPT; other means of meeting satisfactorily security needs can and should be found.

**The CPT recommends the Spanish authorities to take steps to ensure that prisoners sent to hospital to receive treatment are not physically attached to their hospital beds or other items of furniture for custodial reasons.**

151. The CPT's delegation also met a number of inmates among the general prison population who displayed signs of mental illness; a particularly striking case was discovered in Unit 2 of the Prison of Puerto de Santa María I.

**The CPT wishes to emphasise that mentally ill prisoners should be kept and cared for in a hospital facility that is adequately equipped and possesses appropriately trained staff.**

The CPT has already made some remarks of relevance to this question (see paragraphs 136 and 148). More generally, **it would like to receive a full description of the procedures and facilities for the diagnosis and treatment of mental illness among prisoners, of current difficulties in this area and of planned developments.**

e. medical care of prisoners held in isolation

152. The Prison Rules contain specific provisions concerning the medical supervision of prisoners held in isolation as a punishment (Article 112) or for other reasons (Article 141). It is provided in particular that a prisoner subject to isolation as a punishment should be seen daily by a doctor; however, certain prisoners told the delegation that this provision was often not complied with.

153. The extent to which - if at all - doctors should be associated with punishment procedures is a controversial subject. Nevertheless, it is certainly the case that whenever a prisoner held in isolation (for whatever reason), or a prison officer on the prisoner's behalf, requests a medical doctor, such a doctor must be called without delay with a view to carrying out a medical examination of the prisoner. Further, the results of this examination, including an account of the prisoner's physical and mental condition as well as, if need be, of the foreseeable consequences of continued isolation, should be set out in a written statement, to be forwarded to the competent authorities.

**The CPT recommends the Spanish authorities to take all necessary steps to ensure that the practice within prisons complies with the above indications.**

f. conditional release on grounds of ill health

154. In the course of its discussions with medical staff, the delegation's attention was drawn to Article 60 (2) of the Prison Rules, which enables prisoners suffering from a very serious and incurable disease to benefit from conditional release even though they do not meet the usual requirement of having completed three-quarters of their sentence.

155. This is a very humanitarian and highly praiseworthy provision, and one which will no doubt become more important with the expected increase in the number of prisoners suffering from AIDS. In this regard, the delegation was told that the attitude of different supervisory judges on the subject of the conditional release of prisoners with AIDS tended to vary somewhat.

The CPT wishes to learn of any views or policy guidelines that the Spanish authorities might have developed on the question of the application of Article 60 (2) of the Prison Rules to prisoners suffering from AIDS or from other illnesses.

156. Further, the CPT would like to know whether a similar possibility of conditional release in the event of a very serious and incurable disease also exists for remand prisoners.

g. the reporting of ill-treatment

157. Finally, the CPT would like to be informed whether a prison doctor who reaches the conclusion (e.g. when examining a prisoner on his arrival at the establishment or after the use of means of coercion (see also paragraph 106)) that a prisoner has been ill-treated, has a professional duty or is legally obliged, with the prisoner's consent, to report his findings to an authority and, if so, which authority.

## 5. Other issues related to the CPT's mandate

a. regime activities

158. At the outset, it should be stated that one notable feature of the regimes in all the establishments visited by the CPT's delegation was the amount of out-of-cell time enjoyed by prisoners. With the exception of prisoners in the categories referred to in paragraph 110, they were unlocked from their cells or dormitories for between 10 and 12 hours a day, and therefore had considerable opportunities for exercise and association with other prisoners.

As regards organised activities, it would be appropriate to make a distinction between the remand prisons and the prisons for the serving of sentences visited.

159. By their very nature **the prisons of Algeciras, Basauri and Puerto de Santa María II, and the remand section of Alcalá-Meco Prison**, have a fairly rapid turnover of inmates; under such circumstances, the organisation of satisfactory regime activities is not a straightforward matter. However, it is important that efforts be made to provide a programme of purposeful activities, especially bearing in mind that it is not uncommon for people to be held in these establishments for long periods (frequently more than a year and occasionally considerably longer) awaiting trial or the outcome of appeal proceedings.

160. Workshops existed at Basauri (e.g. cardboard assembly, carpentry, trimming of rubber components) and Puerto de Santa María II (football and basket making) which provided occupation for a small proportion of the inmates. Workshops also existed at Alcalá-Meco Prison, but the delegation was informed that they only provided work for persons in the sentenced prisoners section of the establishment (see paragraph 162). There were no workshops at Algeciras Prison, but a fair number of sentenced prisoners worked outside the prison under a regime of semi-liberty; this number might be even higher if better facilities existed for the overnight accommodation of such prisoners (see paragraph 124).

To make up for the lack of places in workshops, many inmates were involved in domestic duties (i.e. cleaning, maintenance, kitchen, etc.). Painting prison premises had apparently been a particularly productive source of work during the period just prior to the delegation's visits, a point made somewhat accusingly by inmates on more than one occasion.

A number of educational/vocational courses existed at the prisons (e.g. at Algeciras - ceramics, electrical, literacy and Spanish; at Puerto de Santa María II - ceramic and leather work) as well as library facilities (the impressive number of foreign books available in Algeciras Prison deserves a particular mention). However, these facilities would have to be developed considerably for their benefits to reach a significant proportion of the inmates.

Gymnasiums existed at Alcalá-Meco, Basauri (albeit a very small one) and Puerto de Santa María II. However, the delegation gained the distinct impression that the extensive facility at Alcalá-Meco was not being fully exploited.

161. While recognising the efforts already being made, **the CPT invites the Spanish authorities to speed up the development of regime activities for prisoners at Algeciras, Basauri and Puerto de Santa María II Prisons and in the remand section of Alcalá-Meco Prison.**

**In this connection, the CPT would like to receive further information on the "full occupation scheme" (plan de ocupación integral) which it learned had been devised by the Directorate General of Prison Services.**

162. Turning to the prisons designed to cater for sentenced prisoners which the delegation visited (i.e. the **sentenced prisoner section of Alcalá-Meco Prison and the prison of Puerto de Santa María I**), one would expect them to offer regime activities of a more developed nature. Ideally there should be an individualised treatment programme for each prisoner, and the CPT notes that this is precisely what is provided for in Article 62 of the General Organic Law on Prisons.

The CPT's delegation observed that regime activities in the sentenced prisoners section of Alcalá-Meco Prison were of a somewhat higher order than those in the remand section. In particular, sentenced prisoners had access to a number of well-equipped workshops providing work of considerable vocational value (e.g. printing and photocomposition). However there were only places for 60 prisoners in all, in other words less than one third of the sentenced population.

As regards the Prison of Puerto de Santa María I, reference has already been made to the penury of activities for prisoners held in Unit 2 of the establishment (see paragraph 112). Prisoners in the other units of the prison did not fare a great deal better. As far as the delegation could judge, regime activities were on a par with those offered in the adjacent remand establishment of Puerto de Santa María II. The delegation found little evidence of individualised treatment programmes designed to promote the re-education and social reinsertion of the prisoners held there (cf. Articles 59 and 62 of the General Organic Law on Prisons).

In addition to the recommendation already made under paragraph 114, **the CPT recommends the Spanish authorities to review regime activities for prisoners in general at the Prison of Puerto de Santa María I, in order to ensure that the treatment objectives laid down by law are being met.**

163. As already indicated (paragraph 89), a considerable number of **young prisoners**, both on remand and sentenced, are held at Alcalá-Meco Prison. In this connection, **the CPT wishes to emphasise that regime activities for young prisoners need to be adapted to their particular needs; they should include inter alia a significant amount of physical education. Further, the staff assigned to units accommodating young prisoners must be carefully chosen and, more specifically, be people capable of guiding and motivating young people.**

Specific mention should also be made of regime activities for **female prisoners**. The women encountered at the prisons of Algeciras and Puerto de Santa María II were underprivileged by comparison with male prisoners insofar as regime activities were concerned. Some of them followed educational courses, but most of the female prisoners appeared to have nothing whatsoever to do apart from domestic chores. **The CPT invites the Spanish authorities to endeavour to develop regime activities for female prisoners which are geared to their wider needs and interests.**

164. On the specific subject of **prison work**, after the visit to Spain the Spanish authorities kindly forwarded information on the "remission through work" system set up under Article 100 of the Penal Code, which served to clarify its operation. However, **the CPT wishes to inform the Spanish authorities that many prisoners alleged that the system was not being applied fairly.**

The CPT still has some doubts concerning the issue of remuneration for prison work. Its delegation was informed in some establishments that only those prisoners occupied in workshops received payment for their work; for other work, such as the performance of cleaning or maintenance duties, the only "remuneration" provided was remission. This is a significant distinction, especially in view of the limited number of places in the prison workshops seen by the delegation (and the total absence of workshops at Algeciras Prison). The CPT notes that Article 27 (2) of the General Organic Law on Prisons provides that all directly productive work ("todo trabajo directamente productivo") will be remunerated. However, a generally expressed right for prisoners to have paid work is set out in Article 25 (2) of the Spanish Constitution. Similarly, Rule 76 (1) of the European Prison Rules provides that there shall be "a system of equitable remuneration of the work of prisoners".

**The CPT would like to receive information on the precise types of work for which remuneration is given and on the rates of pay.**

165. Satisfactory regime activities will not be possible unless there is the staff to organise, animate and supervise them. The information on human resources in the prisons visited provided by the Spanish authorities at the outset of the delegation's visit indicated that on the whole the official staff complements were being met (though there was a significant number of vacant posts among supervisory staff at Algeciras Prison, and unfilled posts for educators at Alcalá-Meco, Basauri and Puerto de Santa María II). Of course, there remains the question whether the official staff complements are themselves adequate.

The issue of staffing levels is a complex matter and the CPT certainly does not have all the information necessary to express a definite view on the matter. However, **it wishes to inform the Spanish authorities that its delegation heard many complaints of inadequate numbers of staff (specialised and supervisory), from both governor grade staff and prison officer representatives.**

b. information provided to prisoners

166. Article 17 of the Prison Rules provides that prisoners should on their arrival be given written information about the establishment's regime. The CPT's delegation was satisfied that prisoners in certain of the prisons visited were receiving this information. It was particularly impressed by the information package given to new prisoners at Basauri Prison, and noted that a similar measure was envisaged at Algeciras Prison. However, some prisoners in other prisons alleged that they had never received any information about the regime. Further, most foreign prisoners spoken to complained that very little written information was available in languages other than Spanish.

**The CPT recommends that the Spanish authorities:**

- **take steps to ensure that Article 17 of the Prison Rules is complied with in all establishments;**
- **set themselves the objective of providing to every newly arrived prisoner the information referred to in Article 17 of the Prison Rules in a language that he understands.**

167. In addition to the information provided on a prisoner's arrival, **the CPT would suggest that details of the principal aspects of an establishment's regime, and of the rights and duties of prisoners and complaints procedures, be displayed on an ongoing basis on prison notice boards.**

c. contact with the outside world

168. It is extremely important for prisoners to be allowed to have reasonably good contact with the outside world. Above all, a prisoner must be given the means of safeguarding his relationship with his family.

**The guiding principle should be the promotion of contact with the outside world; any limitation upon such contact should be based exclusively on security concerns of an appreciable nature or resource considerations.**

*i. visits*

169. A prisoner's entitlement to ordinary visits (two visits a week of at least 20 minutes each) is acceptable, especially when seen in conjunction with the special visit allowance (see paragraph 170). However, conditions in the booths used for ordinary visits were not satisfactory, in particular at the prisons of Algeciras, Basauri and Puerto de Santa María II. On being tested by members of the delegation, it was found that there was a fundamental problem of hearing. Prisoner and visitor were separated by a pane of thick glass, and oral communication was via a small speaking hole, often situated not at face level but in the window sill. Persons on opposite sides of the pane had to speak loudly to hear each other; on the other hand, what was being said by the person in the adjacent booth could be heard quite distinctly. The delegation witnessed the consequences of this state of affairs in one visiting area when it was full. Prisoners and their visitors were crouched over the window sill speaking holes and literally shouting down them to make themselves heard. This must have been a degrading experience for prisoner and visitor alike and certainly offered a preposterous spectacle to the outside eye.

**The CPT recommends that steps be taken without delay to remedy the above-mentioned problems of oral communication between prisoners and visitors in the visiting booths. Further, it invites the Spanish authorities to explore the possibility of having more open arrangements for ordinary visits, at least for certain categories of prisoners.**

170. In addition to ordinary visits, prisoners are allowed a special visit (i.e. with their family or spouse/partner) once a month for a duration of at least one hour.

**In the CPT's opinion, such visits are of fundamental importance in the context of the social reinsertion of a prisoner, and should be developed as far as possible. The objective should be to have these visits take place in homelike conditions, thereby promoting stable relationships.**

171. The possibility for prisoners to have visits from their spouses/ partners, during which they can have sexual relations, is an illustration (among many others) of the progressive nature of Spanish legislation on prison matters. Of course, if such visits are allowed, it is important that they take place under satisfactory conditions. In this regard, some complaints were heard by the CPT's delegation that "vis-à-vis" rooms were often in a dirty and unhygienic state. Further, allegations were made of insufficient heating and shower facilities in the rooms.

**At the time of the delegation's visit, the vis-à-vis rooms were reasonably clean; this should always be the case. The CPT would add that prisoners should be allowed to use their own sheets and towels or be provided with a clean set when receiving the visit of their spouse or partner. Furthermore, it would be appropriate to make provision for a second vis-à-vis room at the prison of Puerto de Santa María II.**



172. The delegation was informed that as it was inconceivable to supervise a spouse/partner visit, many Grade 1 prisoners were not allowed such visits for security reasons. This approach is understandable. However, **the CPT considers that a prohibition on security grounds of visits from a spouse or partner should be reviewed at regular intervals in order to check whether the considerations justifying the prohibition remain valid.**

173. **It would be appropriate for the rules on visits to be applied with some flexibility with regard to visitors who must travel long distances to see a prisoner; this apparently is not always the case at present.** For example, it should be possible for the two weekly visits of 20 minutes each to be combined into one visit of 40 minutes.

174. Further, the delegation heard complaints at Algeciras Prison that family members travelling from Morocco to visit a prisoner were sometimes refused entry to Spain, even though they held a document issued by the prison director authorising the visit.

**The CPT invites the Spanish authorities to check whether these complaints have any substance and, if necessary, take appropriate action.**

*ii. telephone contact*

175. Telephone contact between a prisoner and his family is allowed (at the expense of the prisoner and the person called) under certain circumstances, in particular when the family members live so far away from the prison as to render regular visits impracticable. However, the CPT's delegation heard many complaints from prisoners (in particular foreigners) about very limited possibilities to telephone their families. At the prisons of Alcalá-Meco and Puerto de Santa María II, the delegation was told that a prisoner who did not receive visits was allowed one telephone call (lasting 5 minutes) per month.

The situation was somewhat better at Algeciras Prison, a telephone contact every 15 days being allowed. On the other hand, complaints were heard at Algeciras that newly arrived prisoners had to wait 15 days before being allowed to make the first telephone call to their family.

176. **The CPT recommends that:**

- **prisoners who do not receive regular visits from members of their families, because of the distance at which they live from the prison, be given substantially improved possibilities for telephone contact with their families;**
- **newly arrived prisoners whose families live at a considerable distance from the prison be allowed to speak by telephone with a member of their family as soon as possible after their admission to the establishment.**

*iii. written communication/packets*

177. The rules concerning the sending and receipt of letters and packets call for no particular comment by the CPT.

However, the CPT's delegation heard several complaints that letters written by or sent to Grade 1 prisoners, as well as books sent to them, were the subject of very long delays as a result of security/censorship procedures (the problem is apparently particularly acute as regards material written in Basque). Such procedures are a necessary evil; however, they must not result in a prisoner's contact with the outside world being jeopardised.

**The CPT invites the Spanish authorities to examine whether security/censorship procedures are causing excessive delays in the receipt of mail and other written material sent by or to prisoners and, if appropriate, take remedial action.**

178. The CPT would add that the roll call/distribution of letters procedure observed in the women's section of the Prison of Puerto de Santa María II left a great deal to be desired. It was carried out in a humiliating manner for prisoners.

*d. physical conditions of detention: some specific points*

179. Certain comments concerning physical conditions in the establishments visited have already been made in the context of earlier sections (see in particular III. C. 3. b. (overcrowding) and III. C. 5. c. (contact with the outside world)). The CPT would like to draw attention to some other specific points observed by its delegation in the course of its visit. However, before doing so it should be said that the physical conditions of detention in the standard single cells seen by the delegation in the more modern modular type prisons visited were in principle quite acceptable. The cells were of good size - approximately 9 square metres - for one person (though some of them were very narrow i.e. less than 2 metres wide) and possessed furniture and sanitary/washing facilities of a reasonable standard. Common facilities in the modules (e.g. showers and exercise areas) were also on the whole fairly good. Assuming an absence of overcrowding (i.e. one prisoner per cell), a reasonable amount of out-of-cell time and a developed programme of purposeful activities, the types of modular accommodation seen would be more than adequate.

180. In several of the establishments visited the cells were not equipped with a call bell. Prisoners who needed assistance when locked in their cells had to draw the attention of a prison officer by calling or by banging on the cell door.

The risk of a prisoner in need being left unattended would be significantly reduced if a call bell system existed. **The CPT recommends that all prison cells be equipped with a call bell.**

181. The CPT's delegation heard many complaints about the state of bedding and the availability of towels. Prisoners in several establishments alleged that they had no opportunity to change their bed sheets regularly and had not been issued with a towel.

**The CPT considers that prisoners should be provided with two clean sheets and one or more clean towels every week, and that each new prisoner should be provided with a clean set of blankets.**

Bedding at Algeciras Prison was on the whole reasonably clean. However, **much of it was in a very poor state of repair (including the mattresses) and should be replaced.**

182. There was good access to shower facilities in all the establishments visited. However, prisoners in some establishments (e.g. Algeciras) complained that there was insufficient hot water, and in one establishment (Puerto de Santa María II) that there was sometimes no water at all. **The CPT asks that these complaints be examined and, if necessary, that remedial action be taken.**

183. The delegation was struck by the low temperature in Basauri Prison - approximately 16°C in the normal cellular accommodation, falling to 14°C in the admissions ("ingreso") department. **Heating facilities in the establishment should be reviewed/installed.**

184. Finally, the aged in-cell toilet facilities in many of the cells in Algeciras and Basauri Prisons (as well as the toilet facilities in the family visits room at Algeciras) emitted a rather strong smell. **The installation of better toilet facilities and/or ventilation should be envisaged.**

e. the supervisory judge (and other monitoring procedures)

i. *watchdog functions*

185. The existence of an authority which is independent of the prison administration, with the power to hear (and if necessary take action upon) complaints from prisoners in a particular establishment about their treatment and to inspect the prison premises, is a fundamental safeguard against ill-treatment. In Spain it is the supervisory judge ("Juez de Vigilancia penitenciaria") who embodies this authority, at the same time as exercising numerous other powers.

It should be added that the Defensor del Pueblo (Ombudsman) has the power to visit prisons and examine the manner in which inmates are being treated, and he has produced some impressive reports in this area. However, it is clear that he is not in a position to exercise regular supervision over the situation in each and every prison establishment in Spain.

186. The tasks of the supervisory judge are spelt out in Article 76 of the General Organic Law on Prisons. Many of them relate to the execution of sentences by convicted prisoners. However, it would seem that he is also given the role of safeguarding the rights of prisoners in general ("los internos") and of correcting abuses.

**The CPT would like to receive confirmation that it is incumbent upon supervisory judges to safeguard the rights of all prisoners (i.e. both sentenced prisoners and those on remand) in the establishments under their responsibility, as well as information on their precise powers as regards the correcting of abuses that they observe.**

187. The CPT's attention has also been drawn to Article 526 of the Code of Criminal Procedure, which provides that the investigating judge shall visit the prisons of the locality once a week, without prior notice; this provision stipulates that in the course of such visits the judge "shall ascertain the situation of the prisoners or detainees ("los presos o detenidos") and take such measures as are within his power to correct any abuses he has noted". As far as the delegation could judge from its discussions with prison staff and inmates, Article 526 is rarely if ever complied with.

**The CPT would like to be informed:**

- **whether the provisions of Article 526 of the Code of Criminal Procedure are being applied in practice;**
- **of the respective roles of the supervisory judge and the investigating judge as regards the safeguarding of the rights of prisoners.**

188. In order to carry out his different functions vis-à-vis prisoners effectively, and more particularly that of safeguarding the rights of prisoners, a supervisory judge must be "visible" to both the prison authorities and staff and the prisoners. More specifically, he should visit each establishment for which he is responsible on a regular basis and on these occasions not limit his activities merely to meeting people who have specifically requested to see him.

189. Article 76 (2) (h) of the General Organic Law on Prisons provides that supervisory judges shall carry out the prison visits provided for in the Code of Criminal Procedure. The CPT is not certain as to which provision(s) of the Code reference is made. As already mentioned, Article 526 of the Code provides for visits to a prison every week by the investigating judge, but does not refer (at least not explicitly) to the supervisory judge.

In practice, the frequency with which different establishments are visited by the supervisory judge appears to vary considerably; in one establishment, the delegation was told that he carried out a visit approximately every two weeks, in another, every six weeks. Of course, such variations could be explained in part by the size of an establishment. However, doubtless the workload of a given judge and his degree of assiduousness are also important factors.

In the CPT's view, more precise rules are needed in this area in order to ensure the effectiveness of the supervisory judge's role as a protector of the rights of prisoners. **It recommends:**

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

Regular visits of this kind will inter alia enable supervisory judges to use profitably the power given to them by Article 77 of the General Organic Law to make proposals concerning the functioning of the establishment's different services and activities.

*ii. other functions*

190. In addition to examining complaints that the rights of prisoners have been violated, the supervisory judge takes decisions concerning the execution of sentences (e.g. remission through work, conditional release), resolves disputes concerning a prisoner's classification or sanctions imposed on him, takes decisions upon sanctions of solitary confinement in excess of 14 days, etc.

**The CPT wishes to have a clearer picture of the procedural safeguards which accompany the decision-making process at the level of the supervisory judge. In particular, it would like to be informed whether the prisoner concerned:**

- **has a right to be heard personally by the judge;**
- **has a right to legal assistance.**

191. Further, on a number of issues, such as remission for work performed and conditional release under Article 60 of the Prison Rules, the delegation gained the impression that the positions of supervisory judges could differ quite considerably.

**The CPT considers that it would be useful if some means could be found of enabling supervisory judges to exchange views and experiences on a regular basis, the aim being to harmonise as far as possible their practice.**

f. disciplinary questions

i. *the disciplinary system*

192. The basic elements of the disciplinary system in prisons are described in Appendix II (paragraphs 18 to 20). The CPT notes in particular that before a prisoner can be the subject of a disciplinary sanction imposed by the Regime and Administration Board, he must be informed of the offence he is alleged to have committed and be given an opportunity to present his defence, either orally or in writing.

193. The Regime and Administration Board may, in respect of certain types of offence, impose a sanction of up to 14 days solitary confinement ("aislamiento en celda") per offence. This is a severe sanction to be placed in the hands of a non independent authority. However, all disciplinary sanctions can be the subject of a complaint to the supervisory judge. Further the judge must approve any sanctions of solitary confinement which exceed in total 14 days.

**The CPT would like to receive confirmation:**

- **that both sentenced and remand prisoners can complain to the supervisory judge about disciplinary sanctions imposed on them;**
- **that in respect of both sentenced and remand prisoners, the supervisory judge's approval must be sought for sanctions of solitary confinement exceeding 14 days.**

194. The CPT's delegation visited the units in which prisoners were held in solitary confinement as a punishment. The general atmosphere and conditions were - as one would expect - more austere than in the normal units, but were not unacceptable as a punishment regime.

ii. *application of disciplinary measures to female prisoners*

195. A number of female prisoners met by the CPT's delegation alleged that the disciplinary system was applied extremely rigorously vis-à-vis women. After the delegation's visit the Spanish authorities were requested to provide any available statistics concerning the application of the disciplinary system. The authorities promptly forwarded statistics covering 1990.

196. The above-mentioned statistics showed inter alia that 8,871 sanctions were imposed in 1990 in respect of a total of 7,685 female prisoners (a rate of 1.15 to 1), whereas 41,750 sanctions were imposed in respect of a total of 79,339 male prisoners (a rate of 0.52 to 1). At first sight, these figures lend credibility to the allegations heard by the delegation.

**The CPT would like to receive the comments of the Spanish authorities as regards the possible reasons for this significant difference between the rates of sanctions imposed on respectively female and male prisoners.**

*iii. the transfer of troublesome prisoners*

197. A number of Grade 1 prisoners met by the CPT's delegation alleged that they were frequently transferred from prison to prison; one prisoner claimed that he had been in five prisons within the previous five months.

198. The CPT is fully aware that certain prisoners are extremely difficult to handle, and that the transfer of such a prisoner to another establishment can sometimes prove necessary. However, it should be stressed that the continuous moving of a prisoner from one establishment to another can have very harmful effects on his psychological and physical wellbeing. Moreover, a prisoner in such a position will have difficulty in maintaining appropriate contacts with his family and lawyers. The overall effect on the prisoner of successive transfers could under certain circumstances amount to inhuman or degrading treatment. Clearly, the practice of transferring troublesome prisoners is one that must be handled with the greatest of care.

**The CPT would like to be informed of the procedures and practice concerning the transfer of troublesome prisoners and of related guarantees for the prisoners concerned.**

*g. training of prison officers*

199. The training of prison officers is a subject to which the CPT attaches the greatest importance. There is arguably no better safeguard against the ill-treatment of a prisoner than a properly trained prison officer.

200. Prison officer trade union representatives with whom the CPT's delegation spoke expressed dissatisfaction with the training presently given to prison officers. It was claimed that initial training was inadequate and that there were few possibilities for ongoing training.

**The CPT would like to receive information on the length and content of training for prison officers, both initial and ongoing, and on any planned developments in this area.**

It should be noted in this connection that new recruits into the prison service tend to be well-qualified; the delegation was told that most young prison officers have had full secondary level education. Entrants of this standard are likely to respond favourably to developed training programmes.

201. The CPT has already emphasised (paragraph 104) that during the training of prison officers, considerable emphasis should be placed on acquiring and developing interpersonal communication skills. The possession of such skills will facilitate the development of constructive relations between staff and inmates. The result will be not only a lowering of tension but also an enriching of the prison officer's occupation.

Prison officer trade union representatives claimed that they wished to foster positive contacts between staff and inmates. However, they alleged that prison managements were generally not in favour of such a development; as one representative put it "they want us to act as doormen".

**202. It is recommended that prison officers who work in establishments that accommodate a large number of foreign prisoners (such as Algeciras and Puerto de Santa María II) be given special training.**

A knowledge of the cultural backgrounds of foreign prisoners should facilitate relations between staff and such inmates and help to prevent prejudiced attitudes from arising. Further, at least some of the supervisory staff should have a knowledge of relevant foreign languages.

203. Finally, no matter how good the atmosphere might be within a prison, prison officers will on occasion be confronted with violence, either against themselves or between inmates. Physical restraint methods exist which enable a violent prisoner to be controlled rapidly but which at the same time limit injuries on all sides.

**The CPT recommends that prison officers be given special technical training to enable them to restrain violent prisoners.**



**D. Postscript: the GRAPO hunger strike**

204. In March 1990, the CPT raised certain questions with the Spanish authorities concerning a hunger strike which a number of prisoners belonging to the terrorist organisation GRAPO were undertaking at that time. The CPT wished in particular to explore certain allegations brought to its attention that the prisoners were being force fed. Exchanges of correspondence between the CPT and the Spanish authorities on this subject continued throughout 1990. A considerable amount of written information on the hunger strike (and in particular medical information concerning individual hunger strikers) was forwarded to the CPT. Further, Mrs Granados Poveda (then Deputy Director General responsible for Prison Health) attended two CPT meetings (in May and September 1990), accompanied on the second occasion by Mr Borrego Borrego, and provided additional comments and information concerning the hunger strike. On 1 March 1991, the Spanish authorities informed the CPT that the hunger strike had ended on 20 February 1991.

205. As was made clear from the outset of the correspondence on this subject, the CPT's concerns were not related to the very principle of force feeding but rather to the precise practical and medical conditions under which any force feeding was being carried out.

In May 1991, Mrs Granados Poveda told the CPT that artificial feeding was subject to the prisoner's consent. In the event of loss of consciousness, it was for the doctor to decide; however, no conscious patient had been artificially fed against his will.

206. In the course of its visit to Spain, the CPT's delegation met three prisoners who had participated in the GRAPO hunger strike who claimed that at certain stages of the strike they had been force fed while conscious. The force feeding was allegedly effected either by nasal tube or intravenously, with the prisoner being tied to the bed.

Interestingly, in each of the cases the pattern of events was allegedly the same: a refusal of a dangerously ill hunger striker to be artificially fed, leading to artificial feeding against his will (i.e. force feeding), a subsequent acceptance of artificial feeding by the prisoner for a certain time, and then a refusal of food.

It should be added that the delegation also heard from certain other credible (i.e. medical and judicial) sources that prisoners had been force fed during the hunger strike while conscious.

207. The CPT does not wish to reopen the issue of the GRAPO hunger strike, the more so as it understands that certain individual applications on this matter have now been submitted to the European Commission of Human Rights. However, it felt that it should draw the attention of the Spanish authorities to the information referred to in paragraph 206 **and request them to submit any comments that they consider appropriate.**

#### **IV. RECAPITULATION AND CONCLUSIONS**

##### **A. Police and Civil Guard establishments**

208. A number of prisoners interviewed by the CPT's delegation alleged that they had been tortured or severely ill-treated while in the custody of the National Police or Civil Guard. These allegations were made in particular (but not exclusively) by persons being held in respect of terrorist offences. Most of the allegations related to periods of police or Civil Guard custody a few years ago; however, some of them related to very recent periods of custody. No allegations of torture were made by detained persons met by the CPT's delegation in the police establishments visited (as regards the Civil Guard establishments visited, no one was in custody at the time of the delegation's visit), and their general appearance was not such as to provide grounds for concern in this regard.

209. It is widely acknowledged, on the one hand, that during the dictatorship in Spain the police and Civil Guard frequently had resort to torture and severe ill-treatment when interrogating suspects and, on the other hand, that instances of torture and severe ill-treatment had reduced significantly during the years following the introduction of a democratic regime. The CPT is satisfied that recourse to torture or other forms of severe ill-treatment by law enforcement officials is no longer a common practice in Spain. However, in view of the persistence of a certain number of allegations of very recent torture or severe ill-treatment, it would be premature to conclude that the phenomena of torture and severe ill-treatment have been eradicated.

210. While the number of allegations of recent torture and severe ill-treatment was limited, the CPT's delegation did hear an extremely large number of allegations of less severe forms of ill-treatment (slaps, punches, kicks, verbal abuse) of detained persons by police and Civil Guard officers. The sheer number of the allegations lends them credibility, as do certain of the delegation's on-site observations.

211. The CPT has examined existing formal safeguards against torture and other forms of ill-treatment of detained persons and has made certain recommendations and comments in this area: e.g. the period during which a person in police or Civil Guard custody can be denied the communication provided for in Article 520 (2) (d) of the Code of Criminal Procedure (i.e. notification to his family or other third party of the very fact and place of his detention) to be shortened substantially; the length of time during which such a person can be held incommunicado to be reduced; access to legal assistance to be improved, in particular as regards consultation in private with a lawyer; the rules on the medical examination of detainees to be reinforced; a code of practice for the conduct of interrogations to be drawn up and published; the possibility of developing a single and comprehensive custody record for each detainee to be explored; etc.

212. However, legal and other technical safeguards against ill-treatment - although important - will never be sufficient; the best possible guarantee against ill-treatment is for its use to be unequivocally rejected by law enforcement officials. Consequently, the CPT has recommended that a very high priority be given to human rights education and professional training for such officials of all ranks and categories. Further, the need for law enforcement officials to possess interpersonal communication skills has been stressed.

213. Physical conditions of detention in the police and Civil Guard establishments visited varied considerably; they were satisfactory and even very good in some places, but extremely poor in others. The CPT has made a number of detailed remarks concerning conditions of detention in several of the establishments. The Committee is particularly concerned by conditions in the cells of the Judicial Unit for the Madrid Region in the Civil Guard Headquarters in Madrid, and in the National Police Station of Puerta del Sol. As regards the former, they should be withdrawn from service until such time as they are provided with adequate lighting and ventilation, and even then only be used for temporary holding purposes. As regards the latter, the CPT considers that the National Police should find better equipped premises for its main holding centre for detainees in Madrid. It should be added that the cellular accommodation in the Headquarters of the Municipal Police at Bilbao was found to display some surprising deficiencies for such a recently built facility.

214. The frequent detention of persons held under the aliens legislation for periods of up to two or three weeks at the National Police station of Algeciras deserves a particular mention. Facilities at the station are quite inadequate for such lengthy stays. The CPT has recommended that alternative accommodation arrangements be made (see also paragraph 216).

## **B. Other establishments of a non-penitentiary nature**

215. No evidence was found of serious ill-treatment of persons held in the Detention Centre for foreigners at Moratalaz (Madrid). However, the CPT's delegation heard many complaints that the police officers who supervised the centre frequently resorted to verbal abuse, and on occasion used greater force than was necessary when dealing with incidents between detainees. More generally, the delegation observed that there was a tense atmosphere in the centre. On the other hand, the material conditions of detention in the centre were on the whole good.

The CPT has made a number of recommendations designed to improve the climate within the centre. Particular reference has been made to the need to choose carefully the police officers assigned to supervisory duties in the centre (possession of developed interpersonal communication skills; knowledge of the cultural backgrounds of the detainees; etc.), to improve access to the centre's patio and more generally to develop activities for the detainees.

216. Looking beyond the Detention Centre at Madrid, the CPT considers that the establishment of such centres for this category of persons is a very positive development, provided that they are properly equipped. As is illustrated by the example of the National Police Station at Algeciras, material conditions in police stations will frequently if not invariably be inadequate for the detention of someone for a period that might last up to 40 days.

217. The CPT has also made certain recommendations concerning conditions for persons obliged to stay more than 12 hours in the "special transit room" at Barajas Airport. However, it should be underlined that all efforts should be made to avoid people spending more than a few hours in the room.

### **C. Prisons**

218. A considerable number of allegations of ill-treatment by prison officers were heard by the CPT's delegation in the prisons of Alcalá-Meco (Madrid II) and Puerto de Santa María I and II (Cádiz).

As regards Alcalá-Meco, the allegations related for the most part to events in the past, and there was a consensus among the prisoners spoken to that the situation in the prison had improved significantly in recent times. However, isolated incidents of ill-treatment allegedly still occurred, in particular vis-à-vis the many young prisoners held in the establishment. The CPT has recommended that this matter be examined by the Spanish authorities.

The allegations heard in the prisons of Puerto de Santa María I and II concerned the present time and related inter alia to the use of instruments of physical restraint. The CPT's delegation was satisfied that there was no systematic ill-treatment of prisoners; however, it found a number of individual cases which suggested that prison officers had used more force than was reasonably necessary when faced with violent or disturbed behaviour. The CPT has recommended that the Spanish authorities take steps to ensure that Article 5 of the Prison Rules is fully complied with in these establishments, and has made some specific recommendations on the subject of recourse to instruments of restraint. More generally, the CPT's delegation observed that prison staff-inmate relations in the Prisons of Puerto de Santa María I and II left a great deal to be desired; appropriate steps should be taken to improve those relations.

219. Very few allegations of physical ill-treatment were heard at Algeciras and Basauri (Bilbao) Prisons. Prison staff-inmate relations in those establishments appeared to be satisfactory.

220. In the course of a brief visit to the prison of Herrera de la Mancha in order to interview certain prisoners held there, the CPT's delegation spoke to two inmates who alleged that they had been very seriously ill-treated by successively Civil Guard officers and prison staff following the ending of a hostage-taking incident in mid-March 1991 in which they had been involved. The CPT has requested to be provided with full details of the examination of these allegations.

221. As regards the conditions of detention in the prisons visited, the CPT has highlighted certain areas of particular concern: the treatment of Grade 1 prisoners, overcrowding, the transport of prisoners, and some aspects of the medical services.

222. The CPT's delegation found that certain Grade 1 prisoners were subject to regime conditions which were scarcely distinguishable from those of a prisoner undergoing solitary confinement as a punishment. In this connection it should be recalled that people are sent to prison as a punishment, not for punishment; the material conditions of detention of a prisoner held in isolation as a result of his Grade 1 status should be clearly better than those of a prisoner being punished, and all forms of isolation of Grade 1 prisoners should be as short as possible.

Further, the CPT's delegation was struck by the penury of activities for Grade 1 (phases 1 and 2) prisoners in general. The CPT has recommended that the regime applied to such prisoners be reviewed as a matter of urgency, with a view to developing purposeful activities for them.

223. Overcrowding was a significant problem in three of the establishments visited i.e. the prisons of Algeciras, Basauri and Puerto de Santa María II. The CPT has made a certain number of recommendations, comments and requests for information in this area. The recommendation aimed at reducing the extraordinary level of overcrowding observed in the women's unit at Puerto de Santa María II deserves a particular mention.

More generally, the CPT wishes to express its approval of the general principle of one prisoner per cell established by Article 19 of the General Organic Law on Prisons.

224. The CPT's delegation heard allegations from several sources that the physical conditions in the vehicles used for transporting prisoners were frequently very poor, in particular in the vehicles used for medium to long distance travel. These allegations were borne out to a large extent by an inspection of two prisoner transport vans. The CPT has recommended that the adequacy of space, lighting and ventilation in prisoner transport vehicles, and of safety arrangements for prisoners in the event of an accident, be reviewed.

225. Staffing levels and facilities in the medical services of the prisons visited were on the whole quite good, and the level of medical care for inpatients in the prison infirmaries appeared satisfactory. By contrast, the CPT's delegation heard many complaints about the quality of ambulant care, and these complaints seemed to be justified. Moreover, in some of the establishments at least, access to specialist care was clearly a problem area.

The CPT has made a number of recommendations and comments related to the above issues as well as certain others (e.g. prisoner counselling both before and after HIV blood tests, medical care of prisoners held in isolation, the treatment of mentally ill prisoners, transport and custodial arrangements for prisoners sent for treatment to civil hospitals). The recommendation that steps be taken without delay to improve dental care in prisons, should be highlighted.

226. The CPT has also made recommendations, comments and requests for information on a variety of other issues related to its mandate, such as regime activities, contact with the outside world, the role of the supervisory judges as a protector of the rights of prisoners, disciplinary questions, etc. The CPT wishes to draw particular attention to its remarks concerning the training of prison officers. It deserves to be repeated that there is arguably no better safeguard against the ill-treatment of a prisoner than a properly trained prison officer. Developed interpersonal communication skills are an essential part of the make-up of such an officer, as is knowledge of the cultural backgrounds of foreign prisoners held in the establishment in which he works.

227. Finally, it should be stressed that although the CPT has made a number of criticisms concerning the conditions of detention in the prisons visited by its delegation, on several matters the CPT formed a positive opinion. The considerable amount of out-of-cell time enjoyed by the vast majority of prisoners should be mentioned in this regard, as well as the progressive approach followed on such matters as visits by a prisoner's spouse or partner, conditional release on grounds of ill health and semi-liberty regimes. Further, assuming an absence of overcrowding, a reasonable amount of out-of-cell time and a developed programme of purposeful activities, the cellular accommodation seen in the sort of modular type prisons now being constructed is quite satisfactory.

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228. The CPT wishes to reiterate that throughout its visit, the Committee's delegation met with a very satisfactory degree of cooperation from the relevant authorities both at national and, subject to one or two exceptions, at local level.

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

229. The various recommendations, comments and requests for information formulated by the CPT are summarised in Appendix I to this report.

230. As regards more particularly the CPT's recommendations, having regard to Article 10, paragraph 2 of the Convention, the CPT requests the Spanish authorities:

- i) to provide within six months an interim report giving details of how it is intended to implement the CPT's recommendations and, as the case may be, providing an account of action already taken (N.B. the CPT has indicated the urgency of certain of its recommendations);
- ii) to provide within twelve months a follow-up report providing a full account of action taken to implement the CPT's recommendations.

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

**APPENDIX I**

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

**A. Police and Civil Guard establishments**

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

recommendations

- a very high priority to be given to human rights education and professional training for law enforcement officials of all ranks and categories. Experts not belonging to the law enforcement agencies to be involved in this education and training (paragraph 29);
- an aptitude for interpersonal communication to be a major factor in the process of recruiting law enforcement officials and considerable emphasis to be placed on acquiring and developing interpersonal communication skills during the training of such officials (paragraph 29);
- senior law enforcement officials to be required to deliver to their subordinates the clear message that the ill-treatment of detained persons is not acceptable and will, if discovered, be dealt with severely (paragraph 29).

**2. Conditions of detention in police and Civil Guard establishments**

recommendations

- the conditions of detention in the different police and Civil Guard establishments visited by the CPT's delegation to be reviewed, in the light of the remarks made in paragraphs 33 to 41 (paragraph 43);
- appropriate steps to be taken to ensure that the conditions of detention in police and Civil Guard establishments in general meet the requirements indicated in paragraph 31 (paragraph 43);
- the possibility of withdrawing from service the cellular accommodation at the Puerta del Sol National Police Station to be explored (paragraph 43);
- persons held under the aliens legislation to be accommodated elsewhere than in the National Police Station of Algeciras, in a place offering better facilities (paragraph 44).

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

#### recommendations

- the period during which a person in the custody of the police or the Civil Guard can be denied the communication provided for in Article 520 (2) (d) of the Code of Criminal Procedure to be shortened substantially (paragraph 47);
- the length of time during which a person in the custody of the police or the Civil Guard can be held incommunicado to be reduced (paragraph 48);
- a person taken into custody by the police or the Civil Guard to be granted the right, as from the outset of the period of custody, to consult in private with a lawyer, it being understood that, in the case of a detainee held incommunicado, the lawyer shall be officially appointed on his behalf (paragraph 52);
- appropriate steps to be taken to ensure that the consulate of the country of a detained foreign national is only informed of his detention with the consent of the detainee (paragraph 54);
- a person detained by the police or the Civil Guard for an offence to which Article 520 bis of the Code of Criminal Procedure applies to be fully examined by the relevant forensic doctor both at the outset and at the end of his custody in each place of detention in which he is held (paragraph 57);
- a person detained by the police or the Civil Guard who is being held incommunicado and who requests a medical examination to be examined by the relevant forensic doctor and, if he so wishes, by a doctor chosen from a list of doctors drawn up in agreement with the appropriate professional body (paragraph 57);
- a person detained by the police or the Civil Guard who is not being held incommunicado to have the right to be examined by a doctor of his own choice, in addition to any examination by a state-employed doctor (paragraph 57);
- all medical examinations of detainees to be conducted out of the hearing, and preferably out of the sight, of police or Civil Guard officers (paragraph 57);
- the results of all medical examinations as well as relevant statements by the detainee and the doctor's conclusions to be formally recorded by the doctor and made available to the detainee (paragraph 57);
- a code of practice for the conduct of interrogations to be drawn up and published; the code to address inter alia the following questions: informing the detainee of the identity of those present during the interview, the maximum possible length of a given interview without a break, rest periods between interviews, the places in which an interview may take place, whether the detainee may be required to stand while being questioned, the interviewing of persons who are under the influence of drugs or alcohol. The code should also provide that a record be systematically kept of the times during which a detainee is questioned (paragraph 59);



- the possibility of introducing a system of electronic recording of interrogations by law enforcement officials, providing all appropriate guarantees, to be explored (paragraph 59);
- the possibility of developing a single and comprehensive custody record, showing all aspects of a detained person's custody and action taken regarding them, to be explored (paragraph 65).

#### comments

- desirability of judges having more frequent recourse to paragraph 3 of Article 520 bis of the Code of Criminal Procedure and in particular of visiting persons detained for offences to which that Article applies (paragraph 61).

#### requests for information

- the views of the Spanish authorities on the complaints heard by the CPT's delegation concerning the general functioning of the system of officially appointed lawyers and information on any measures envisaged in this area (paragraph 53);
- information on the precise procedures followed by investigating or trial judges when confronted with allegations by the accused that evidence presented against him was obtained as a result of torture or other forms of ill-treatment (paragraph 62);
- information on any special procedures for investigating expeditiously allegations of torture and other forms of ill-treatment by law enforcement officials (paragraph 63).

### **B. Establishments of a non-penitentiary character**

#### **General comments**

- the number and/or capacity of detention centres for foreigners in the south of Spain might usefully be increased (paragraph 67).

#### **1. Detention Centre for foreigners at Moratalaz (Madrid)**

#### recommendations

- police officers assigned to supervisory duties in the centre to possess developed interpersonal communication skills, knowledge of the cultural background of the detainees and (at least some of the officers) knowledge of relevant foreign languages (in particular arabic and french) (paragraph 70);
- the centre's internal rules and information notices, as well as those expressions most commonly used in daily interactions, to be translated into various languages (paragraph 70);

- police officers not to carry truncheons in the centre, or at least to carry truncheons that can be and are hidden from view (paragraph 71);
- not more than six detainees to be held to a cell (paragraph 72);
- immediate steps to be taken to improve access to the centre's patio. Each detainee to be able to spend at least one hour everyday on the patio, preferably much longer (paragraph 76);
- activities for detainees in the centre to be developed (paragraph 77).

comments

- trained police officers should not need to have recourse to truncheons to deal effectively with a fight between two detainees (paragraph 71);
- importance of detainees having ready access to toilet facilities at all times (paragraph 73).

requests for information

- do detainees in the centre have to pay for some medicine? (paragraph 75).

**2. "Special transit room" at Barajas Airport**

recommendations

- anyone obliged to stay in the room for more than 12 hours:
  - . to be provided with suitable means for sleeping (mattresses, blankets, etc.);
  - . to be offered at least one hour's exercise in the open air per day;
  - . to be granted access to their luggage for the purpose of changing clothes, etc. (paragraph 83).

comments

- the question of why many people are obliged to spend a considerable number of days in the room needs to be examined by the relevant authorities as a matter of urgency (paragraph 83).

**3. Cells at the Audiencia Nacional**

comments

- the ventilation in the cells in the Audiencia Nacional should be checked and all cells should be equipped with a means of rest for persons detained (paragraph 86).

## C. Prisons

### 1. **Torture and physical ill-treatment**

*(issues specific to particular establishments)*

#### recommendations

- the metal rings inserted in the underside of the concrete blocks which form the cell beds and tables at **Alcalá-Meco Prison** to be removed (paragraph 94);
- the Spanish authorities to examine whether prison officers in the young offender units at **Alcalá-Meco Prison** are on occasion abusing their authority and, if necessary, to take remedial action (paragraph 94);
- appropriate measures to be taken to ensure strict compliance with Article 5 of the Prison Rules in the Prisons of **Puerto de Santa María I and II** (paragraph 98);
- as regards instruments of physical restraint, the attention of all relevant staff at the Prisons of **Puerto de Santa María I and II** to be drawn to the following:
  - . instruments of restraint to be resorted to only when all other methods of control fail or when justified on medical grounds;
  - . a prisoner to whom an instrument of restraint has been applied to be kept under constant and adequate custodial surveillance or medical supervision, as the case may be;
  - . instruments of restraint to be removed at the earliest possible opportunity;
  - . instruments of restraint never to be applied, or their application prolonged, as a punishment (paragraph 98);
- appropriate steps to be taken to improve prison staff-inmate relations at the Prisons of **Puerto de Santa María I and II** (paragraph 105).

#### requests for information

- full details of the examination of the allegations made by two prisoners at the Prison of **Herrera de la Mancha** concerning their treatment following the end of a hostage-taking incident in March 1991, as well as of any other proceedings initiated in respect of the hostage taking and related incidents (paragraph 103);
- information on the circumstances under which the batons capable of delivering an electric shock, discovered at the Prison of **Puerto de Santa María I**, may be used and on who may use them (paragraph 108).

*(general issues)*

recommendations

- an aptitude for interpersonal communication to be a major factor in the process of recruiting prison staff and considerable emphasis to be placed on acquiring and developing interpersonal communication skills during the training of such staff (paragraph 104 read in conjunction with paragraph 29);
- as regards means of coercion:
  - . a prisoner against whom means of coercion have been used, to have the right to be immediately examined and, if necessary, treated by a medical doctor;
  - . this medical examination to be conducted out of the hearing, and preferably out of the sight, of non-medical staff;
  - . the results of the medical examination as well as relevant statements by the prisoner and the doctor's conclusions to be formally recorded by the doctor and made available to the prisoner;
  - . a central register to be kept in each prison containing full information on every instance of the use of means of coercion;
  - . incapacitating sprays ("los sprays de acción adecuada") to be removed from the list of means of coercion that may be resorted to by prison officers (paragraphs 106 and 107).

**2. Inhuman or degrading treatment arising from the conditions of detention**

*(concerning Grade 1 Prisoners)*

recommendations

- steps to be taken as a matter of urgency to ensure:
  - . that the material conditions of detention of a prisoner held in isolation as a result of his Grade 1 status are clearly better than those of a prisoner undergoing solitary confinement as a punishment;
  - . that all forms of isolation of Grade 1 prisoners are as short as possible (paragraph 113);
- the regimes applied to Grade 1 prisoners, in particular those in phases 1 and 2, to be reviewed as a matter of urgency, with a view to developing purposeful activities for such prisoners (paragraph 114);

- as regards the classification of prisoners in Grade 1:
  - . prisoners placed in Grade 1 or retrograded to a more severe phase within that grade to be informed in writing of the reasons for that measure, except when security requirements dictate otherwise;
  - . a prisoner in respect of whom such a measure is envisaged to be given an opportunity to express his views on the matter;
  - . prisoners in Grade 1 to be kept informed of the outcome of reviews of their classification, irrespective of any change in that classification;
  - . the classification of prisoners in Grade 1 to be reviewed at least every three months (paragraph 116).

*(concerning overcrowding)*

recommendations

- with its existing dormitory and cellular accommodation, the inmate population at **Algeciras Prison** to be kept under 250 and as close as possible to 200 (paragraph 123);
- steps to be taken without delay to improve conditions at **Algeciras Prison** for prisoners benefitting from a regime of semi-liberty (paragraph 124);
- serious efforts to be made to reduce the level of occupation of the cells measuring 9 square metres at the Prison of **Puerto de Santa María II** to two prisoners per cell (paragraph 126);
- for so long as the above-mentioned cells are occupied by more than one person, a partition or other means of offering a suitable degree of privacy to be installed around the toilet facility in the cells (paragraph 126);
- steps to be taken immediately to reduce substantially the number of prisoners held in the existing facilities of the women's unit at the prison of **Puerto de Santa María II** (paragraph 127);
- facilities for women in the above-mentioned unit who have young children with them to be significantly improved; ideally a distinct mother/baby section should be created (paragraph 127).

comments

- steps designed to contain the overcrowding of **Basauri Prison** and in due course to reduce the inmate population should be taken (paragraph 119);
- implementation of the plans to transform the dormitories at **Algeciras Prison** into cellular accommodation should be accorded a high priority (paragraph 122).

requests for information

- information on the scale of the problem of overcrowding in Spanish prisons and on the strategy and precise plans of the Spanish authorities for dealing with it (paragraph 128).

*(concerning the transport of prisoners)*

recommendations

- the adequacy of:
  - . space, lighting and ventilation in the vehicles used for prisoner transport, in particular in those used for long distance travel,
  - . means to ensure the safety of prisoners in the event of such a vehicle being involved in an accident

to be reviewed (paragraph 131).

comments

- a van of the type described in the first sub-paragraph of paragraph 130 should not be used for the long distance transport of prisoners or for the transport over any distance of a sick prisoner (paragraph 130).

requests for information

- any regulations concerning the characteristics of vans used for transporting prisoners as well as any court judgments given on this subject (paragraph 131).

**3. Medical services and related issues**

recommendations

- steps to be taken without delay to improve dental care in prisons and in particular to provide caries treatment free of charge (paragraph 145);
- someone competent to provide first aid to always be present on prison premises, preferably a person with a recognised nursing qualification (paragraph 146);
- existing arrangements for the transporting of prisoners to hospitals to be reviewed (paragraph 150);
- prisoners sent to hospital to receive treatment not to be physically attached to their hospital beds or other items of furniture for custodial reasons (paragraph 150);

- whenever a prisoner held in isolation (for whatever reason), or a prison officer on the prisoner's behalf, requests a medical doctor, such a doctor to be called without delay with a view to carrying out a medical examination of the prisoner; the results of this examination, including an account of the prisoner's physical and mental condition as well as, if need be, of the foreseeable consequences of continued isolation, to be set out in a written statement, to be forwarded to the competent authorities (paragraph 153).

#### comments

- the vacant post for a doctor at **Algeciras Prison** should be filled as soon as possible (paragraph 134);
- importance of adequate prisoner counselling both before and - if appropriate - after an HIV blood test (paragraph 138);
- the fact that medical care is provided within a prison environment does not in any way justify dispensing with efforts to establish a satisfactory doctor/patient relationship in accordance with good medical ethics (paragraph 140);
- importance of a good follow-up by medical staff of outpatient treatment; in many cases it is not sufficient for follow-up care to depend upon the initiative being taken by the prisoner (paragraph 142);
- the CPT's delegation heard that it was frequently difficult to persuade consultant psychiatrists to visit prison establishments (paragraph 148);
- efforts to establish a satisfactory level of co-operation between prison medical services and the civil hospital structure should be intensified (paragraph 149);
- mentally ill prisoners should be kept and cared for in a hospital facility that is adequately equipped and possesses appropriately trained staff (paragraph 151).

#### requests for information

- information on the training received by prison doctors in psychiatry and neurology (paragraph 136);
- a full description of the procedures and facilities for the diagnosis and treatment of mental illness among prisoners, of current difficulties in this area and of planned developments (paragraph 151);
- any views or policy guidelines that the Spanish authorities might have developed on the question of the application of Article 60 (2) of the Prison Rules to prisoners suffering from AIDS or from other illnesses (paragraph 155);
- whether a similar possibility of conditional release in the event of a very serious and incurable disease also exists for remand prisoners (paragraph 156);

- whether a prison doctor who reaches the conclusion (e.g. when examining a prisoner on his arrival at the establishment or after the use of means of coercion) that a prisoner has been ill-treated, has a professional duty or is legally obliged, with the prisoner's consent, to report his findings to an authority and, if so, which authority (paragraph 157).

#### **4. Other issues related to the CPT's mandate**

##### recommendations

- regime activities for prisoners at the Prison of **Puerto de Santa María I** to be reviewed, in order to ensure that the treatment objectives laid down by law are being met (paragraph 162);
- as regards information provided to prisoners:
  - . steps to be taken to ensure that Article 17 of the Prison Rules is complied with in all establishments;
  - . the authorities to set themselves the objective of providing to every newly arrived prisoner the information referred to in Article 17 of the Prison Rules in a language that he understands (paragraph 166);
- steps to be taken without delay to remedy the problems of oral communication between prisoners and visitors in the visiting booths at the Prisons of **Algeciras, Basauri and Puerto de Santa María II** (paragraph 169);
- as regards telephone contact:
  - . prisoners who do not receive regular visits from members of their families, because of the distance at which they live from the prison, to be given substantially improved possibilities for telephone contact with their families;
  - . newly arrived prisoners whose families live at a considerable distance from the prison to be allowed to speak by telephone with a member of their family as soon as possible after their admission to the establishment (paragraph 176);
- all prison cells to be equipped with a call bell (paragraph 180);
- measures to be adopted to require supervisory judges to visit each establishment under their responsibility at least once a week, irrespective of whether any prisoners have requested to see the judge (paragraph 189);
- in the course of this weekly visit, the supervisory judge to view the whole of the prison premises and enter into direct contact with both prisoners and prison staff (paragraph 189);



- prison officers who work in establishments that accommodate a large number of foreign prisoners to be given special training (paragraph 202);
- prison officers to be given special technical training to enable them to restrain violent prisoners (paragraph 203).

comments

- the development of regime activities for prisoners at **Algeciras, Basauri and Puerto de Santa María II** Prisons and in the **remand section of Alcalá-Meco Prison** should be speeded up (paragraph 161);
- regime activities for young prisoners need to be adapted to their particular needs; they should include inter alia a significant amount of physical education. Further, the staff assigned to units accommodating young prisoners must be carefully chosen and, more specifically, be people capable of guiding and motivating young people (paragraph 163);
- efforts are required to develop regime activities for female prisoners which are geared to their wider needs and interests (paragraph 163);
- many prisoners alleged that the system of remission through work was not being applied fairly (paragraph 164);
- many complaints were heard, from both governor grade staff and prison officer representatives, about inadequate numbers of staff (both specialised and supervisory) (paragraph 165);
- details of the principal aspects of an establishment's regime, and of the rights and duties of prisoners and complaints procedures, should be displayed on an ongoing basis on prison notice boards (paragraph 167);
- as regards contact of prisoners with the outside world, the guiding principle should be the promotion of such contact; any limitation upon contact should be based exclusively on security concerns of an appreciable nature or resource considerations (paragraph 168);
- the possibility of having more open arrangements for ordinary visits should be explored, at least for certain categories of prisoners (paragraph 169);
- family and spouse/partner visits are of fundamental importance in the context of the social reinsertion of a prisoner, and should be developed as far as possible. The objective should be to have these visits take place in homelike conditions, thereby promoting stable relationships (paragraph 170);

- as regards more particularly spouse/partner visits:
  - . vis-à-vis rooms should always be kept reasonably clean;
  - . prisoners should be allowed to use their own sheets and towels or be provided with a clean set when receiving the visit of their spouse or partner;
  - . provision should be made for a second vis-à-vis room at the Prison of **Puerto de Santa María II**;
  - . a prohibition on security grounds of visits from a spouse or partner should be reviewed at regular intervals in order to check whether the considerations justifying the prohibition remain valid (paragraphs 171 and 172);
- the rules on visits should be applied with some flexibility with regard to visitors who must travel long distances to see a prisoner (paragraph 173);
- the authorities are invited to check whether complaints that family members travelling from Marocco to visit prisoners at **Algeciras Prison** are sometimes refused entry to Spain have any substance and, if necessary, to take appropriate action (paragraph 174);
- the authorities are invited to examine whether security/censorship procedures are causing excessive delays in the receipt of mail and other written material sent by or to prisoners and, if appropriate, to take remedial action (paragraph 177);
- prisoners should be provided with two clean sheets and one or more clean towels every week, and each new prisoner should be provided with a clean set of blankets (paragraph 181);
- the bedding at **Algeciras Prison** should be renewed (paragraph 181);
- complaints from prisoners at **Algeciras and Puerto de Santa María II** about access to water should be examined and, if necessary, remedial action taken (paragraph 182);
- heating facilities at **Basauri Prison** should be reviewed/installed (paragraph 183);
- the installation of better in-cell toilet facilities and/or ventilation should be envisaged at **Algeciras and Basauri Prisons** (paragraph 184);
- it would be useful if some means could be found of enabling supervisory judges to exchange views and experiences on a regular basis, the aim being to harmonise as far as possible their practice (paragraph 191).

requests for information

- information on the "plan de ocupación integral" (paragraph 161);
- information on the precise types of work for which remuneration is given and on the rates of pay (paragraph 164);

- confirmation that it is incumbent upon supervisory judges to safeguard the rights of all prisoners (i.e. both sentenced prisoners and those on remand) in the establishments under their responsibility, as well as information on their precise powers as regards the correcting of abuses that they observe (paragraph 186);
- information on whether the provisions of Article 526 of the Code of Criminal Procedure are being applied in practice and on the respective roles of the supervisory judge and the investigating judge as regards the safeguarding of the rights of prisoners (paragraph 187);
- information on procedural safeguards accompanying the decision-making process at the level of the supervisory judge, and in particular whether the prisoner concerned has a right to be heard personally by the judge and a right to legal assistance (paragraph 190);
- confirmation that both sentenced and remand prisoners can complain to the supervisory judge about disciplinary sanctions imposed on them, and that in respect of both sentenced and remand prisoners, the supervisory judge's approval must be sought for sanctions of solitary confinement exceeding 14 days (paragraph 193);
- the comments of the Spanish authorities on the possible reasons for the significant difference between the rates of sanctions imposed on respectively female and male prisoners (paragraph 196);
- the procedures and practice concerning the transfer of troublesome prisoners and of related guarantees for the prisoners concerned (paragraph 198);
- information on the length and content of training for prison officers, both initial and ongoing, and on any planned developments in this area (paragraph 200).

**D. Postscript: the GRAPO hunger strike**

requests for information

- any comments that the Spanish authorities consider appropriate concerning the information received by the CPT's delegation in the course of its visit that prisoners had been force fed during the hunger strike while conscious (paragraph 207).

## **APPENDIX II**

### **LEGAL FRAMEWORK**

1. In the following paragraphs, reference is made to some of the legal provisions in Spain that are relevant to the subject of torture and inhuman or degrading treatment or punishment of persons deprived of their liberty.

#### **A. Basic human rights safeguards**

2. According to Article 15 of the Spanish Constitution of 1978:

"Every person has the right to life and physical and moral integrity and may under no circumstances be subjected to torture or to inhuman or degrading punishment or treatment".

3. Even before the adoption of the Constitution, a specific provision covering acts of torture and other forms of ill-treatment by public officials (Article 204 bis) was included in the Penal Code, and was subsequently reinforced in 1989. According to this provision:

An authority or public official who, in the course of a police or judicial investigation, and in order to obtain a confession or testimony, commits any of the offences provided for in Chapters I (homicide) and IV (serious bodily harm) of Title VIII (Book 2) and Chapter VI (threats and acts of coercion) of Title XII (Book 2) of the Penal Code shall incur the maximum penalty which the offence carries and, in addition, special disqualification (paragraph 1).

If, for the same purpose, they perform any of the acts punished in Article 582, paragraph 2, the fact shall be deemed an offence (delito) and they shall incur the penalties of "prisión menor" from the minimum to the medium degree (from six months and a day to four years and two months), and special disqualification. If the acts performed are any of those provided for in Article 585, the fact shall also be deemed an offence and punished with the penalties of "arresto mayor" (from one month and a day to six months) and suspension (paragraph 2).

The same penalties shall be incurred respectively, by prison authorities or officers who commit, with regard to detainees or prisoners, the acts referred to in the previous paragraphs (paragraph 3).

An authority or public official who, in the course of criminal proceedings or the investigation of the offence, subjects the person being questioned to conditions or methods which intimidate him or do violence to his wishes shall incur the penalty of "arresto mayor" and special disqualification (paragraph 4).

The penalties laid down in the previous paragraphs shall also be imposed on an authority or official who, by neglecting the duties attaching to his position, allows other persons to perform the deeds provided for in those paragraphs (paragraph 5).

4. Article 6 of the General Organic Law on Prisons stipulates that "no prisoner shall be subjected to ill-treatment by word or by deed". Article 5 of the Prison Rules develops this provision as follows: "No prisoner shall be subjected to torture or ill-treatment by word or deed, or be the subject of unnecessary harshness in the application of the rules".

5. As regards the admissibility of evidence obtained through torture, the Spanish Constitutional Court stated in a judgment of 28 November 1984 that "although there is no specific legal rule establishing the inadmissibility of evidence acquired unlawfully, it must be recognised that it derives from the priority position of fundamental rights in the legal system and their expressly inviolable status". In a subsequent Law (Organic Law 6/85 of 1 July 1985) it was spelt out that evidence obtained either directly or indirectly through a violation of fundamental rights or freedoms shall be inadmissible.

6. Further, by virtue of Article 96, paragraph 1, of the Spanish Constitution, international treaties ratified by Spain form part of the domestic legal order once they have been officially published. As a result, the provisions of the European Convention on Human Rights and the United Nations Convention against Torture (both of which have been ratified by Spain and officially published) can be invoked before the courts and administrative authorities.

7. Reference should also be made to the post of Defensor del Pueblo (Ombudsman), established by Article 54 of the Constitution. The Defensor del Pueblo supplements the normal legal and administrative remedies for violations of fundamental rights. He can act either on the basis of complaints or ex officio and has the right inter alia to visit any place of detention and examine the treatment of persons held there. He has also the power to summon officials concerned. In the event of evidence being found of ill-treatment, he will bring the matter to the attention of the Public Prosecutor and/or the administrative authorities concerned. The Defensor del Pueblo reports on his activities directly to the Spanish Parliament.

## **B. Police custody**

8. Article 17 (2) of the Spanish Constitution stipulates that preventive detention should last no longer than is strictly necessary and that in every case the person detained must be either released or placed at the disposal of the judicial authorities within a maximum of 72 hours. Article 17 (3) goes on to provide that every detainee shall be informed immediately of his rights and of the reasons for his arrest, and that the person concerned may not be compelled to make a statement. In addition, it is stipulated that the detainee shall be guaranteed the assistance of a lawyer for police and judicial inquiries.

9. The provisions of Article 17 of the Constitution are developed in Article 520 of the Code of Criminal Procedure, which merits being cited in extenso:

"520. 1. Provisional detention and imprisonment shall be carried out in the manner that harms the detainee or prisoner least in his person, reputation and property.

Preventive detention may not last for longer than is strictly necessary for the carrying out of the investigations aimed at establishing the facts. Detainees shall be released or placed at the disposal of the judicial authorities within the periods laid down in this Act, and in any case within a maximum period of 72 hours.

2. All detainees or prisoners shall be informed, immediately and in a manner understandable to them, of the charges against them and the reasons for their detention or imprisonment, as well as of their rights, and especially the following:

- a) The right to remain silent if they so wish, not to answer one or more of the questions put to them, or to state that they will only speak in the presence of the judge.
- b) The right not to make declarations against themselves and not to confess themselves guilty.
- c) The right to appoint a lawyer and request his presence when making statements to the police or a judge and when undergoing identity checks. If the detainee or prisoner fails to appoint a lawyer, an official appointment shall be made.
- d) The right to have the fact of his detention and the place in which he is being held at any given time made known to the relative or other person of his choice. Foreign nationals shall have the right to have the aforementioned circumstances made known to the consulate of their country.
- e) The right to be assisted free of charge by an interpreter, in the case of a foreign national who does not understand or does not speak Spanish.
- f) The right to be examined by the forensic doctor or his deputy and, failing them, by that of the institution in which he is being held, or by any other doctor employed by the state or other public authorities.

3. If the detainee or prisoner is a minor or person deprived of legal capacity, the authority in whose custody that person is shall inform those exercising parental authority over him, his guardian or those actually caring for him of the circumstances referred to in sub-paragraph 2.d) and, if they cannot be found, shall report immediately to the Public Prosecutor. If the person is a foreign national, the fact of his detention shall automatically be reported to the consul of his country.

4. The judicial authority and officials in whose custody the detainee or prisoner is shall refrain from making recommendations to him concerning the choice of a lawyer and shall communicate to the Bar Association, in a verifiable manner, the name of the lawyer chosen by him to assist him or the request that one be officially appointed on his behalf. The Bar Association shall notify the appointee so that he can state his acceptance or refusal. If the appointee turns down the assignment, cannot be found or fails to appear, a lawyer shall be officially appointed by the Bar Association. The appointed lawyer shall go to the detention centre as soon as possible, and in any case no more than 8 hours after the communication to the Bar Association.

If, 8 hours after the communication to the Bar Association, a lawyer has unjustifiably failed to appear at the place where the detainee or prisoner is being held, the business of taking the detainee's or prisoner's statement and identifying him may be commenced, provided he gives his consent, without prejudice to the responsibilities contracted in the event of the appointed lawyers failing to fulfil their obligations.

5. Nevertheless, the detainee or prisoner may dispense with compulsory legal assistance if he is being held for offences which may be classified exclusively as offences against road safety.

6. The lawyer's assistance shall consist in:

- a) Requesting, where appropriate, that the detainee or prisoner be informed of the rights laid down in paragraph 2. of this article and that the medical examination referred to in sub-paragraph f) be carried out.
- b) Upon conclusion of the proceedings in which he has taken part, asking that the judicial authority or officer who conducted them request further and better particulars on the points which he considers relevant and for the inclusion in the record of any incidents which took place during the proceedings.
- c) Interviewing the detainee in private upon completion of the proceedings in which he has taken part."

10. Despite the provisions of Article 17 (2) of the Constitution, Article 520 bis of the Code of Criminal Procedure (introduced into the Code in 1988) enables the period of preventive detention to be extended to 5 days in the case of certain categories of detainees. The relevant paragraph reads as follows:

"1. Any person detained as a presumed participant in any of the offences referred to in Article 384 bis shall be placed at the disposal of the competent judge within 72 hours of his detention. Nevertheless, the detention may be extended for the time necessary for the purposes of the investigation, up to a maximum limit of another 48 hours, provided such extension is requested by means of a communication stating reasons within the first 48 hours and is approved by the judge within the next 24 hours. The extension shall be either authorised or refused by way of a decision stating reasons."

The offences referred to in Article 384 bis are "offences committed by a person who is a member of an armed band or has links with armed bands or persons who are terrorists or rebels".

The Audiencia Nacional in Madrid has exclusive competence to try persons detained under Article 520 bis; consequently, the "competent judge" will be one in charge of a central examining court in Madrid.

11. Persons in preventive detention may, on the basis of a judicial decision, be held incommunicado. The situation of detainees held incommunicado is spelt out in Article 527 of the Code of Criminal Procedure. It is particularly noteworthy that such a detainee continues to enjoy the rights guaranteed by Article 520 of the Code, subject to three modifications:

- re. Article 520 (2) (c), his lawyer shall in all cases be officially appointed;
- he is not entitled to the communication provided for in Article 520 (2) (d) (i.e. to have the fact of his detention and the place in which he is being held at any given time made known to the relative or other person of his choice);
- he is not entitled to the interview with his lawyer provided for in Article 520 (6) (c) (i.e. an interview in private upon completion of the proceedings in which the lawyer has taken part).

12. Special provisions on incommunicado detention apply to persons detained under Article 520 bis. The subject is dealt with in paragraph 2 of the Article:

"2. Where a person is detained on the grounds stated in the previous paragraph, the judge may be requested to order that he be held incommunicado. The judge's decision, stating reasons, shall be taken within a period of 24 hours. When incommunicado detention has been requested, the detainee shall in all cases remain incommunicado, without prejudice to his right of defence and to the provisions of Articles 520 and 527, until such time as the judge has issued the relevant decision."

13. Supervision of the situation of persons detained under Article 520 bis is provided for in paragraph 3 of the Article, which stipulates as follows:

"3. During detention, the judge may at all times request information on and ascertain the detainee's situation personally or by delegating responsibility to the investigating judge of the district in which the detainee is being held."

### **C. Imprisonment**

14. The aims of imprisonment and the basic rights of prisoners are set out in Article 25 (2) of the Constitution. According to this provision, prison sentences are to be orientated towards re-education and social reinsertion and must not involve forced labour. Further, sentenced prisoners are to enjoy the fundamental rights provided for in the Constitution, with the exception of those excluded in the sentence, by the fact of imprisonment or by the Prison Law. In addition, such prisoners are to have the right to paid work and related social security benefits, as well as to access to culture and to the integral development of their personality.



15. The provisions of the Constitution have been developed in the General Organic Law on Prisons of 1979 and the Prison Rules of 1981, and they undoubtedly add up to one of the most forward looking and ambitious laws on prison matters in Europe insofar as the "treatment" (understood as the whole of the activities directly aimed at re-education and social reinsertion) of prisoners is concerned.

16. The General Organic Law stipulates that prisons should not hold more than 350 inmates per unit ("por unidad") and establishes the principle of one prisoner per cell. As regards the latter requirement at least, this can best be regarded as an objective which the Spanish authorities are striving to meet.

17. The Prison Rules deal in considerable detail with the different aspects of the day to day life of prisoners. In the present context, reference should be made to the disciplinary system, authorised means of coercion, complaint procedures and the role of the supervisory judge.

18. The disciplinary system is based on a distinction between very serious, serious and minor offences, the particular offences falling within each of these broad categories being set out exhaustively.

19. The most severe sanction that can be imposed is solitary confinement. It may only be resorted to when there is clear evidence of violence or aggressiveness on the part of the prisoner or when he has repeatedly and in a serious manner disrupted normal prison life. Further, the sanction of solitary confinement must be served in a cell that is similar to other cells of the establishment. The maximum possible period of solitary confinement in respect of a given offence is 14 days in the case of very serious offences and 7 days in the case of serious offences. Further, in the event of two or more offences, the total period of solitary confinement cannot exceed 42 consecutive days.

20. Disciplinary matters are dealt with by the prison's Regime and Administration Board, which is chaired by the Director. The prisoner concerned must be informed of the offence he is alleged to have committed and be given an opportunity to present his defence, either orally or in writing. All sanctions imposed can be the subject of a complaint to the supervisory judge, and the latter's approval is required for sanctions of solitary confinement which exceed in total 14 days.

21. The situations in which resort to means of coercion is allowed are spelt out in Article 45 of the General Organic Law. It is provided that any use of such means must immediately be notified to the supervisory judge and the reasons given. The actual means of coercion that may be used are listed exhaustively in Article 123 of the Prison Rules: provisional isolation, physical force, truncheons, "adequate" sprays and handcuffs. The use of firearms by prison officers is expressly excluded by Article 45 of the General Organic Law.

22. As regards complaint procedures, Article 134 of the Prison Rules stipulates that complaints can be made to the prison management by prisoners about their individual treatment or about the prison regime in general. If the prisoner wishes, the complaint can be sent in a sealed envelope. Moreover, the prisoner can instead request a hearing with the Director in order to present the complaint directly to him.

23. If no reply or followup is given to the complaint within 15 days, the prisoner may submit it to the supervisory judge.

By way of exception, any complaint relating to the fundamental rights of the prisoner or his prison rights and benefits may be submitted without delay to the supervisory judge.

24. The role of the supervisory judge ("el Juez de Vigilancia") is set out in Article 76 of the General Organic Law on Prisons; it is multifaceted. He holds all necessary powers for ensuring the execution of sentences imposed and resolving disputes arising concerning possible modifications of a sentence in accordance with laws and regulations. In addition, he has a more general power to safeguard the rights of prisoners and to rectify any abuses or deviations that might arise.

25. On the basis of these broad powers, a number of specific matters to be dealt with by the supervisory judge are spelt out in Article 76 (2). For example, he: decides (on the basis of proposals) whether to grant conditional release and whether to revoke it; must approve proposals concerning the reduction of sentences as well as sanctions of solitary confinement in excess of 14 days; resolves complaints concerning sanctions imposed or a prisoner's classification; decides upon applications or complaints put forward by a prisoner concerning the prison regime and treatment which relate to the fundamental rights of the prisoner or his prison rights and benefits; carries out the visits to prison establishments provided for in the Code of Criminal Procedure; etc.

26. Further powers are given to the supervisory judge by the Prison Rules. In addition, the prison authorities must notify the judge of a number of matters (e.g. resort to means of coercion (Article 123 of the Prison Rules) and transfers in cases of manifest urgency (Article 35 (2) of the Rules)).

27. Mention should also be made of Article 77 of the General Organic Law, which gives the supervisory judge a broad power to submit proposals to the Directorate General of Prisons concerning all aspects of the organisation and development of an establishment's services and activities.

#### **D. Administrative detention of foreigners**

28. Article 26 of the Law on the rights and freedoms of foreigners in Spain of 1 July 1985 spells out the circumstances under which foreigners can be expelled from the country. In three of the cases concerned (illegal presence on Spanish territory due to expiry of the stay or residence permit; involvement in activities contrary to public order or internal security; absence of licit means of existence, begging or engagement in illegal activities), the government authorities may have the foreigner detained in a non-penitentiary establishment as a preventive measure while his dossier is considered.

29. A foreigner so detained must be brought before the relevant investigating judge within 72 hours. Moreover, his detention must last no longer than is necessary for implementation of the expulsion and shall in no case exceed 40 days.

30. It is expressly stipulated (Article 30 of the Law) that the examination of the dossiers of foreigners in the categories referred to in paragraph 28 must be given priority. Further, the Law provides a number of safeguards for such persons (e.g. presentation in writing of the reasons for expulsion; access (free of charge if necessary) to legal assistance and to an interpreter; rights of appeal).