COUNCIL OF EUROPE CONSEIL DE L'EUROPE

CPT/Inf (2003) 22

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 22 to 26 July 2001

The Spanish Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2003) 23.

Strasbourg, 13 March 2003

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Copy of the letter transmitting the CPT's report

Strasbourg, 27 November 2001

Dear Sir,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I enclose herewith the report to the Government of Spain drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to Spain from 22 to 26 July 2001. The report was adopted by the CPT at its 46th meeting, held from 6 to 9 November 2001.

The CPT requests the Spanish authorities to provide within six months a response containing an account of action taken by them to implement the Committee's recommendations and setting out their reactions to its comments and requests for information. The recommendations, comments and requests for information are set out in **bold type** in the text of the report (cf. paragraphs 18, 22, 23, 24, 25, 26 and 33). The CPT would ask, in the event of the response being forwarded in Spanish, that it be accompanied by an English or French translation. It would also be most helpful if the Spanish authorities could provide a copy of the response in a computer-readable form.

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

Yours faithfully,

Silvia CASALE
President of the European Committee for
the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment

Mr Eugenio LOPEZ ALVAREZ
Technical General Secretary
Ministry of the Interior
E - 28071 MADRID

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 22 to 26 July 2001. The visit was one which appeared to the Committee "to be required in the circumstances" (cf. Article 7, paragraph 1, of the Convention).

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

- Gisela PERREN-KLINGLER (Head of the delegation)
- Davor STRINOVIC.

They were assisted by Mark KELLY, Director, Human Rights Consultants (expert), and by Jan MALINOWSKI of the CPT's Secretariat.

B. Cooperation between the CPT and the Spanish authorities and context of the visit

3. The cooperation received during the visit by the CPT was excellent.

The CPT's delegation had fruitful talks with Pedro MORENES EULATE, Secretary of State for Security, Ana María PASTOR JULIAN, Under-Secretary of the Ministry of the Interior, and Eugenio LOPEZ ALVAREZ, Technical General Secretary of the Ministry of the Interior, as well as with other senior officials from that ministry. A list of the authorities with whom the delegation held consultations is set out in Appendix I to this report.

Cooperation from management and staff in the prisons where the delegation interviewed inmates[1] was very good, and the same was the case at the courts, including the Central Examining Courts at the Audiencia Nacional, where the delegation obtained information concerning the persons interviewed in prison. The CPT is particularly grateful to Ismael MORENO, Dean of the Central Examining Judges, who greatly facilitated the delegation's task.

The Committee also wishes to express its appreciation for the assistance provided to its delegation by Antonio CERROLAZA GOMEZ of the Ministry of the Interior, both before and during the visit.

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[1] Inmates were interviewed at Madrid III (Valdemoro), Madrid V (Soto del Real) and Avila Prisons.

4. As regards the more substantive aspects of cooperation, the CPT welcomes the measures which have been taken by the Spanish authorities in response to the Committee's previous visit reports. However, certain of the CPT's key recommendations as regards the protection of detained persons against ill-treatment by law enforcement officials have yet to receive a satisfactory response. In particular, the Spanish authorities have not implemented the Committee's recommendations regarding the reinforcement of three rights which should be offered to such persons as from the very outset of custody: the right of access to a lawyer, the right of those concerned to have the fact of their detention notified to a close relative or third party of their choice, and the right to a medical examination by a doctor of their choice (in addition to any medical examination carried out by a doctor called by the law enforcement authorities).

5. In its decision to carry out the visit, the CPT took into account the state of affairs referred to in paragraph 4, as well as the persistence of allegations of ill-treatment by law enforcement officials. The latter allegations relate especially - but not exclusively - to persons detained on suspicion of involvement in terrorist-related activities.

In the course of the visit, the CPT's delegation interviewed a number of persons detained in recent months by the National Police and the Civil Guard on suspicion of terrorist-related offences, and gathered other information concerning them. Further, the delegation examined the manner in which complaints of ill-treatment by law enforcement officials are processed by the judicial authorities and through the internal accountability procedures of the National Police and the Civil Guard.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Evidence of ill-treatment of persons detained by the law enforcement agencies

6. As already indicated, the CPT's delegation interviewed a number of persons detained in recent months on suspicion of terrorist-related offences. Certain of them alleged that they had been ill-treated while held in the custody of the National Police and the Civil Guard. Their allegations included blows to various parts of the body and, in some cases, more severe forms of ill-treatment. The latter included allegations of asphyxiation by placing a plastic bag over the head and, as regards the persons detained by the Civil Guard, electric shocks.

As in certain of its previous visits, the delegation gathered ample evidence, including of a medical nature, consistent with allegations of ill-treatment received by it. In particular, despite the time elapsed, in several cases, the delegation's doctors observed traces of injuries which were consistent with the allegations made by the persons in question. It is not, however, for the CPT to seek to establish beyond reasonable doubt whether or not ill-treatment has taken place in each case brought to its attention.

Having regard to the preventive nature of its mandate, the CPT wishes - in this report - to focus on whether the Spanish authorities have established effective safeguards against ill-treatment and accountability mechanisms for cases involving allegations of such treatment. Unless and until such safeguards and mechanisms are fully effective, there will remain a risk that law enforcement officials minded to ill-treat persons deprived of their liberty engage in such conduct.

7. It should be added that, after the July 2001 visit, the CPT has continued to receive allegations of ill-treatment by law enforcement officials, particularly concerning persons detained in connection with terrorist-related activities.

B. Implementation of the CPT's recommendations on safeguards

1. Preliminary remarks

8. The CPT has repeatedly recommended that persons detained by the Spanish law enforcement agencies be granted the right of access to a lawyer as from the outset of their detention, and that the period of time for which such persons may be denied the right to have the fact of their detention and the place in which they are being held made known to a relative or other person of their choice be substantially shortened[2].

At the end of the periodic visit in 1998, the Spanish authorities[3] made known their intention to implement those two longstanding recommendations. However, in their subsequent response to the report on that visit, dated 11 July 2001, the Spanish authorities appeared to withdraw those undertakings, falling back on the assertion that current Spanish law fully guarantees the right to legal assistance and that legal provisions concerning notification of custody are in conformity with the Spanish Constitution and also with the jurisprudence of the European Court of Human Rights.

9. As regards access to a doctor, detained persons already have the right to be examined by a state-appointed forensic doctor and those who are not held incommunicado, in principle, also have the right to be examined by a doctor of their own choice. The CPT has recommended that persons held incommunicado also be guaranteed the right to be examined by a doctor of their own choice, it being understood that such a second examination may take place in the presence of a state-appointed doctor. In their response of 11 July 2001, the Spanish authorities made clear that they saw no need to implement this recommendation.

10. At the outset of the 2001 visit, the Spanish authorities reiterated that they consider that, on the whole, the legal provisions currently in force concerning the above-mentioned three fundamental safeguards provide adequate protection to detained persons against ill-treatment by law enforcement officials.

Consequently, during the 2001 visit, the delegation reviewed once again whether or not the existing legal framework is providing an effective set of safeguards against ill-treatment for persons deprived of their liberty by the law enforcement agencies, in the terms advocated by the CPT.

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[2] Denying the right to notification of custody is one of the consequences of incommunicado detention. For details on the rules which currently govern detention by the Spanish law enforcement agencies, cf. paragraphs 8 to 13 of Appendix II of document CPT/Inf (96) 9, Part I.

[3] Namely the Technical General Secretary of the Ministry of the Interior (the Spanish Government's "competent authority" under Article 15 of the Convention) and the Under-Secretary of State for Security of the Ministry of the Interior.

2. Access to a lawyer

11. In their above-mentioned response of 11 July 2001, the Spanish authorities asserted that "the Government continues to be persuaded that the assistance of a lawyer is fully guaranteed in Spanish law and that, as has been confirmed by the Constitutional Court, the law complies with the Constitution".

During the talks held at the outset of the 2001 visit, senior officials (including the Technical General Secretary of the Ministry of the Interior) stated that the current position of the Spanish Government is that existing provisions on the right to legal assistance are adequate to ensure that, in practice, persons deprived of their liberty by the law enforcement agencies have a right of access to a lawyer as from the very outset of their custody.

12. Nevertheless, as had been the case during all of the CPT's previous visits to Spain, the delegation found that the first moment at which detained persons actually have access to a lawyer is when they make a formal statement to the police. This means that many detained persons can - and, as attested by the persons interviewed by the delegation in the course of the 2001 visit, often do - spend some considerable time in police custody before having access to a lawyer. Further, the precise content of the right of access to a lawyer has not changed since the CPT's first visit to Spain in 1991, and remains unsatisfactory (cf. Appendix II to this report).

The CPT can only conclude that, in practice, the existing provisions on the right to legal assistance fail to ensure that persons deprived of their liberty by the law enforcement agencies have, as from the very outset of their custody, the fully-fledged right of access to a lawyer which the Committee has recommended.

3. Notification of custody

13. Pursuant to the legal provisions which remain in force, certain categories of persons detained by the law enforcement agencies can be denied the right to have the fact of their detention and the place in which they are being held made known to a relative or other person of their choice for up to five days.

In this connection, the CPT has always recognised that the denial for a brief period of the exercise of the right to notify someone of one's custody may exceptionally be necessary in order to protect the legitimate interests of the investigation. However, it has made equally clear that to deny for up to five days the exercise of the right to have the mere fact of one's custody notified to a third party (i.e. to hold a person in secret for such a period insofar as his family and friends are concerned) is not justifiable (cf. for example, paragraph 22 of the CPT's 1998 report).

14. The delegation's findings during the 2001 visit indicate that, at least insofar as persons suspected of terrorist offences are concerned, it is still common practice for the exercise of this right to be delayed for periods up to the legal maximum of five days.

In their responses to the 1998 visit report, the Spanish authorities provide arguments in support of their contention that "on reasonable grounds, the exercise of rights by the detained person can exceptionally be delayed, on condition that they strictly respond to the requirements of the concrete situation." They also assert that this is in accordance with the jurisprudence of the Spanish Constitutional Court and the European Court of Human Rights. However, the Spanish authorities fail to address the essence of the position advanced by the CPT in this connection, namely that a period of a maximum of 48 hours would strike a better balance between the requirements of investigations and the interests of detained persons.

As far as the CPT is concerned, the current legal position remains unsatisfactory.

4. Access to a doctor

15. The CPT has taken due note of the explanation given by the Spanish authorities on the legal provisions currently in force concerning the right of access to a doctor. In conformity with those provisions, persons held incommunicado are still not guaranteed the right of access to a doctor of their own choice (cf. CPT/Inf (96) 9, Part II, paragraph 68); in most cases, access to a doctor remains limited to the examinations carried out by forensic doctors or doctors appointed by the court to perform forensic functions. Further, law enforcement officials are not yet required to inform detained persons who are not held incommunicado of their right to be examined by a doctor of their own choice, nor is such information provided in practice.

The CPT has never suggested that the right of access to a doctor of one's own choice should replace a medical examination by a forensic doctor or another doctor employed by the State. However, a second medical examination by a doctor freely chosen by the detained person can provide an additional safeguard against ill-treatment. As matters stand, the current legal provisions and practice concerning access to a doctor by detained persons fail to guarantee that safeguard.

16. Further, at the express request of the Spanish authorities, the CPT's report on its 1998 visit proposed specific improvements in the wording of the standardised form which should be used by forensic doctors to record the results of their medical examinations (cf. CPT/Inf (2000) 5, paragraph 25).

However, by the time of the 2001 visit, those improvements had not been incorporated into the form, and the delegation found that, in most cases, forensic doctors were not even using the current version of the standardised form.

5. Assessment and action proposed

17. In the light of the information gathered during the visit, the CPT can only disapprove of the stance adopted by the Spanish authorities in respect of the three fundamental safeguards referred to in the preceding paragraphs, particularly in view of the clear undertaking to take action upon the Committee's recommendations given three years ago. The existing legal framework fails to provide an effective set of safeguards against ill-treatment for persons deprived of their liberty by the law enforcement agencies, in the terms advocated by the Committee.

The Committee wishes to recall that, regardless of the approach followed by judicial organs such as the Spanish Constitutional Court and the European Court of Human Rights, the Convention places Spain under a quite distinct obligation to cooperate with the CPT, including by taking steps to improve the situation as regards the protection of persons deprived of their liberty, in the light of the Committee's recommendations.

Having regard to the otherwise excellent cooperation received from the Spanish authorities, the CPT is reluctant to view this state of affairs as a failure to cooperate or refusal to improve the situation in the sense of Article 10, paragraph 2, of the Convention[4]. Nevertheless, the current impasse in its ongoing dialogue with the Spanish authorities on a subject as important as the safeguards against ill-treatment which are to be offered to persons deprived of their liberty by the law enforcement agencies cannot be allowed to continue.

18. **The Committee calls upon the Spanish authorities to take concrete action to implement - without further delay - the following longstanding CPT recommendations:**

- **all persons deprived of their liberty to be granted, as from the very outset of their detention, a fully-fledged right of access to a lawyer of the kind described in paragraph 19 of the report on the CPT's 1998 visit (cf. Appendix I to this report), it being understood that, in the case of persons held incommunicado, the lawyer may be appointed on their behalf;**

- **the period of time for which persons detained by the law enforcement agencies may be denied the right to have the fact of their detention and the place in which they are being held made known to a relative or other person of their choice to be shortened to a maximum of 48 hours;**

- **persons held incommunicado to be guaranteed the right to be examined by a doctor of their own choice, it being understood that such a second examination may take place in the presence of a state-appointed forensic doctor;**

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

- **the form currently being used to inform detained persons of their rights to be amended in order to ensure that all detained persons (i.e. including those being held incommunicado) are expressly informed of their right to be examined by a doctor of their own choice.**

The CPT also recommends that its proposed amendments to the form used by doctors performing forensic functions (cf. CPT/Inf (2000) 5, paragraph 25) be adopted, and that effective steps be taken to ensure that the form is actually used by such doctors.

C. Examination of complaints of ill-treatment by law enforcement officials

1. Preliminary remarks

19. One of the most effective means of preventing ill-treatment by law enforcement officials lies in the diligent examination by the competent authorities of all complaints of such treatment brought before them and, where evidence of wrongdoing emerges, the imposition of appropriate disciplinary and/or criminal penalties. This will have a very strong deterrent effect. Conversely, if the relevant authorities do not take effective action upon complaints referred to them, those minded to ill-treat persons deprived of their liberty will quickly come to believe that they can act with impunity. In this connection, it is axiomatic that the examination of complaints must be conducted by a body which is, and is seen to be, independent and impartial.

20. Spanish law provides that every complaint which may involve the commission of a criminal - including a minor - offence by law enforcement officials must be examined by a court or judge[5]. In consequence, most if not all complaints involving allegations of ill-treatment of detained persons ought to be handled by the judicial authorities.

Nevertheless, allegations which ultimately lead to criminal charges may initially be investigated through internal accountability channels, including by means of a preliminary confidential inquiry ("información reservada"). Further, once the outcome of a criminal case is settled, internal accountability mechanisms may be called upon to re-examine the need for disciplinary action against law enforcement officials.[6]

2. Judicial authorities

21. Detained persons can lodge a complaint about their treatment with the examining judge responsible for their case and are systematically offered the possibility to be examined by a state-employed doctor. The examining judge may take the necessary steps to preserve evidence and initiate proceedings to investigate the allegations or refer the matter to another competent judge. A complaint can also be lodged before the judicial authorities at a later stage.

Naturally, whenever a judge before whom allegations of ill-treatment are made does not personally investigate those allegations, the objective should be to ensure that the complaint reaches the competent court without delay and that the court in question promptly and thoroughly investigates any allegations of ill-treatment made by persons deprived of their liberty.

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5 Cf. Article 8 of Organic Law 2/1986 on the law enforcement agencies ("Fuerzas y Cuerpos de Seguridad del Estado").

6 The principal legal provisions which govern the internal accountability arrangements of the National Police are to be found in Organic Law 2/1986 (Articles 5, 27 and 28), and in Royal Decree 884/1989. As regards the Civil Guard, the provisions concerned are to be found in Organic Law 11/1991 and Royal Decree 208/1996.

22. For many of the types of ill-treatment frequently alleged, it may be difficult to obtain medical evidence of their use. If carried out with a degree of proficiency, asphyxiation by the placing of a plastic bag over the head or the application of electric shocks will not necessarily leave physical marks. Nor will making someone stand for a prolonged period or perform physical exercises leave clearly identifiable traces of such treatment. Even blows to the body may leave only slight marks, difficult to observe and which quickly disappear.

Consequently, when allegations of such forms of ill-treatment come to their notice, **judges should not treat the absence of marks or conditions consistent with those allegations as in itself proving that they are false. In such cases, reaching a sound conclusion as to the veracity of the allegations will also require evaluating the credibility of the person making them; in other words, the persons concerned (as well as any other relevant persons) should be interviewed on this specific matter by the judge, and the opinion of a forensic doctor should be sought.**

23. Judges are empowered to verify the manner in which persons detained under their authority by the law enforcement agencies are treated. As regards persons held incommunicado, this supervisory function is clearly spelt out in Article 520 bis, paragraph 3, of the Code of Criminal Procedure[7]. This provision is all the more important when allegations of ill-treatment of a detained person are brought to the attention of the competent judge. **The CPT invites the General Council of the Judiciary to encourage judges to adopt a more proactive approach in respect of the above-mentioned supervisory function.**

24. The CPT is also concerned to note that, despite previous comments made by the Committee (cf. CPT/Inf (1996) 9, Part II, paragraph 74), persons held incommunicado whose period of detention is extended beyond 72 hours up to a maximum of five days, are still not seen by a judge prior to the decision to extend the detention period (cf. Article 520 bis, paragraph 1, of the Code of Criminal Procedure). It would clearly be in the interests of the prevention of ill-treatment for such persons to be seen by a judge prior to a decision being taken to extend their detention. Further, for a person apprehended by the law enforcement agencies to be held for up to five days before being brought before a judge may not be in conformity with other international legal provisions to which the Spanish authorities have subscribed.

The CPT recommends that persons held incommunicado be systematically brought before the competent judge - or, if the person is detained outside Madrid at the relevant time, before an examining judge of the district in which he is being held - prior to the taking of a decision on the issue of extending the detention period beyond 72 hours.

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[7] Paragraph 3 of Article 520 bis of the Code of Criminal Procedure stipulates that "During detention, the judge may at all times request information on and ascertain the detainee's situation personally or by delegating responsibility to the investigating judge of the district in which the detainee is being held."

25. Public prosecutors also have a key role to play. In particular, it is the task of the prosecution service to instigate legal action in defence of the rights of citizens, both *motu proprio* and following a complaint or at the request of an interested party. It also lies with the prosecution service to ensure that other judicial authorities exercise their functions in conformity with the law. Further, in the context of criminal proceedings, prosecutors are required to call upon the judicial authorities to take the steps required to establish the facts of a case.[8]

The CPT recommends that prosecutors be encouraged to make full use of their prerogatives when allegations of ill-treatment by law enforcement officials come to their attention.

26. It might be added that judges and courts are required to bring to the attention of the General Directorate of the Civil Guard decisions which end criminal proceedings initiated against a Civil Guard officer, i.e. whenever such an officer is sentenced, acquitted, or criminal proceedings are dropped[9]. This provision should ensure that Civil Guard officers do not escape potential disciplinary liability. It would appear that, in practice, this communication also takes place at the outset of criminal proceedings, given that courts serve Civil Guard officers with summons to appear in criminal proceedings through official channels.

By contrast, the CPT understands that courts are under no legal obligation to inform the National Police of the opening of criminal proceedings against police officers or of decisions bringing such proceedings to an end. In consequence, the relevant internal accountability mechanisms may remain unaware of criminal cases under consideration or concluded in respect of police officers. Indeed, a senior officer in the National Police Discipline Unit confided to the delegation that there had been occasions when he had first learned of a criminal case against a police officer by reading about it in the newspapers.

Further, the delegation was told that the courts provide no information to either law enforcement agency about complaints which are declared inadmissible or for other reasons do not lead to the opening of criminal proceedings.

When the competent services of the National Police or the Civil Guard become aware of a criminal case against an officer, they request the relevant court to provide an update on the progress of the case at regular intervals. However, the delegation was told that courts sometimes fail to respond to such requests. In some cases, communication with a court had apparently been so poor that the Police Discipline Unit had resorted to requesting the intervention of the Inspection Service of the General Council of the Judiciary; this had apparently had a salutary effect.

The CPT recommends that, in all cases, courts be required to notify the relevant law enforcement agency of all complaints lodged with them concerning the manner in which a detained person has been treated while in custody and of all subsequent decisions taken concerning those complaints.

3. Internal accountability mechanisms

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8 cf. Articles 124 of the Spanish Constitution, 435 of the Organic Law on the Judiciary, 105 of the Code of Criminal Procedure and 3 (1) of the Law governing the Prosecution Service.

9 First Additional Provision to Organic Law 11/1991.

27. As already indicated (cf. paragraph 20), allegations which ultimately lead to criminal charges may initially be investigated through internal accountability channels; this will also involve assessing whether or not the matter needs to be brought to the attention of the competent court. It also lies with the internal accountability mechanisms to review the need for disciplinary action against law enforcement officials in light of the outcome of criminal proceedings.

28. Less serious disciplinary offences allegedly committed by National Police officers are resolved at local level, i.e. within the unit or regional headquarters where the officer concerned is in post. Disciplinary offences which are characterised as serious or very serious (including cases of alleged ill-treatment by police officers) are in principle processed by the National Police Discipline Unit, in the Directorate General's Personnel Division.

As regards the Civil Guard, disciplinary offences are always investigated within the territorial division in which the accused officer is based. Nonetheless, at central level, the Civil Guard Discipline Service in the Personnel Sub-Directorate collects and processes information on disciplinary or criminal investigations against Civil Guard officers supplied by the territorial divisions or by the courts, and monitors progress made on the files.

In certain cases, investigations into the conduct of National Police officers are carried out by especially appointed officers serving in a different regional headquarters.[10] However, the information gathered in the course of the visit suggests that, even as regards serious disciplinary offences, most cases involving police officers and all cases involving Civil Guard officers are investigated by officers from the same regional headquarters of the National Police or territorial division of the Civil Guard. Consequently, the investigating officer is ultimately answerable to the same hierarchical superior as the officer against whom a complaint has been lodged.

29. Officers conducting disciplinary investigations enjoy considerable discretion as regards the manner in which they handle a complaint against their fellow officers (e.g. they can admit or reject evidence, in the case of the police without appeal; propose to discontinue the inquiry). They also assess whether or not an investigated complaint may involve criminal conduct and decide whether to bring the case to the attention of the competent judicial authorities.

As far as the CPT's delegation was able to ascertain, no detailed guidance has been issued on the manner in which that discretion should be exercised (e.g. when to propose to discontinue an inquiry; the strength of the prima facie evidence of wrongdoing which is required before a case is brought to the attention of the judicial authorities; how to fix, within the statutory limits, the precise sanction to propose).

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[10] One such case, involving the death of a detained person, was the subject of an exchange of correspondence between the CPT and the Spanish authorities in 2000 and 2001.

30. It is clear from the information set out above that the investigation of complaints by the internal accountability mechanisms of the National Police and the Civil Guard cannot be said to be independent and impartial. Further, current arrangements are capable of generating conflicts of interest which officers instructed to process complaints may find difficult to resolve.

31. A disciplinary file may be opened after criminal proceedings are initiated against a National Police or Civil Guard officer, but it can only be concluded once the judgement delivered in the criminal procedure has become final. As it may - and often does - take years for criminal proceedings to be completed, this greatly compromises the efficacy of disciplinary proceedings.

As part of the sentence in a criminal procedure, a law enforcement official may be barred from holding any public office ("inhabilitación especial") (cf. CPT/Inf (2000) 5, paragraph 10). Once the sentence is definitive, further disciplinary charges may be brought. More particularly, criminal conduct is listed among the disciplinary offences characterised as very serious.

The findings in fact of the court are binding for the purpose of disciplinary proceedings. This, together with application of the principle of *non bis in idem*, will greatly limit the extent to which the internal accountability mechanisms can review the need for disciplinary action on the basis of the outcome of criminal proceedings, particularly in the case of an officer who has been acquitted in such proceedings. It would appear that, as a result, despite their possible managerial interest or disciplinary implications, complaints against law enforcement officials which are processed by the judicial authorities rarely become the subject of internal investigations or give rise to disciplinary action.

32. Between January and July 2001, the National Police Discipline Unit initiated no investigation concerning allegations of ill-treatment of persons detained by police officers. A detailed analysis of the unit's records revealed that three cases registered under the heading "ill-treatment of persons in custody" were, in fact, cases of domestic violence allegedly perpetrated by National Police officers upon their spouses/partners. Three cases involving "lesions" were also cases of domestic violence, and one case registered under the same heading involved an altercation between a National Police officer and local police officers (no details were available concerning a further case involving lesions which was apparently being processed at another location). No cases had been registered under the heading "torture".

In 2000, the Discipline Service of the Civil Guard recorded 38 cases of alleged ill-treatment of detained persons, and 18 cases between January and July 2001; judicial proceedings had been initiated in all of those cases. By the time of the visit, out of the 56 cases, 16 had been closed following the end of the judicial proceedings in which all the Civil Guard officers concerned had been acquitted; the remaining 40 cases were still pending.

Senior officials in the Directorate General of the Civil Guard intimated that, for at least five years, no case involving allegations of ill-treatment of a terrorist suspect had been processed by the Discipline Service or had been the subject of an administrative - including a confidential - inquiry at central level.

33. The CPT can only conclude that the potential contribution of National Police and Civil Guard internal accountability mechanisms to the prevention of ill-treatment of persons detained by those agencies is at best limited.

The Committee recommends that consideration be given to creating a fully independent investigating agency to process complaints against law enforcement officials; such a body should have the power to instigate disciplinary proceedings against law enforcement officials and to refer cases to the judicial authorities which are competent to consider whether criminal proceedings should be brought.

More generally, ensuring that police misconduct does not escape disciplinary measures may well require reviewing the standard of proof applied in the disciplinary context. **The CPT would like to receive the comments of the Spanish authorities in this respect.**

APPENDIX I

LIST OF AUTHORITIES WITH WHOM THE CPT'S DELEGATION HELD CONSULTATIONS

A. Ministry of the Interior

Pedro MORENES EULATE	Secretary of State for Security
Ana María PASTOR JULIAN	Under-Secretary
Eugenio LOPEZ ALVAREZ	Technical General Secretary
Antonio CERROLAZA GOMEZ	Deputy Technical General Secretary
Alejandro ALVARGONZALEZ SAN MARTIN	Head of the Private Office of the Secretary of State for Security
José SOLETO ALVAREZ	Head of the Technical Office of the Directorate General of the Police
Ignacio COSIDO GUTIERREZ	Head of the Private Office of the Director General of the Civil Guard
Francisco Javier NISTAL BURON	Deputy Director General for Prison Management
Pedro RODRIGUEZ NICOLAS	Head of the Personnel Division of the Directorate General of the Police
Miguel A. LOPEZ GALAN	Head of the Internal Affairs Unit of the Directorate General of the Police
José Luis TEMPLADO GRADO	Head of the Discipline Unit of the Civil Guard
Antonio CASTANO SANTOS	Discipline Unit of the Civil Guard
José María de las CUEVAS CARRETERO	Judicial Police

B. Judicial authorities

Ismael MORENO	Dean of the Central Examining Judges at the Audiencia Nacional

APPENDIX II

Paragraphs 49 to 51 of the report on the CPT's 1991 periodic visit to Spain - document CPT/Inf (96) 9, Part I

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.

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.

Paragraph 19 of the report on the CPT's 1998 periodic visit to Spain - document CPT/Inf (2000) 5

19. The CPT has repeatedly recommended that persons detained by the law enforcement agencies in Spain be granted the right of access to a lawyer as from the outset of their custody. In this respect, the CPT wishes to reiterate that, in its experience, the period immediately following deprivation of liberty is when the risk of intimidation and ill-treatment is greatest. Consequently, the possibility for persons taken into police custody to have access to a lawyer during that period is a fundamental safeguard against ill-treatment. The existence of that possibility will have a dissuasive effect on those minded to ill treat detained persons; moreover, a lawyer is well placed to take appropriate action if ill-treatment actually occurs.

The right of access to a lawyer as from the outset of custody must include the right to talk to the lawyer in private. The person concerned should also, in principle, be entitled to have a lawyer present during any interrogation conducted by the police (whether this be during or after the initial period of police custody). Naturally, this should not prevent the police from questioning a detained person on urgent matters, even in the absence of a lawyer, nor rule out the replacement of a lawyer who impedes the proper conduct of an interrogation; however, the latter possibility should be strictly circumscribed by appropriate safeguards.

The Committee has recognised that, in order to protect the interests of justice, it may exceptionally be necessary to delay for a certain period a detained person’s access to a particular lawyer chosen by him. However, this should not result in the right of access to a lawyer being totally denied during the period in question. In such cases, access to another, independent lawyer who can be trusted not to jeopardise the legitimate interests of the police investigation should be arranged.