



CPT/Inf (2013) 9

Response

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

from 19 to 22 June 2012

The Spanish Government has requested the publication of this response. The report of the CPT on its June 2012 visit to Spain is set out in document CPT/Inf (2013) 8.

Strasbourg, 30 April 2013

On 13 June 2012 the General Technical Secretariat of the Ministry of the Interior informed the Catalan Department of Justice that a Delegation of the Committee for the Prevention of Torture (hereafter, CPT) was going to visit the Male Prison of Barcelona from 19 to 21 June 2012. This visit was meant to be a complement to the previous one carried out between 30 May and 13 June 2011.

During the preliminary meeting with the liaison contact person designated by the Catalan Department of Justice, the Committee Delegation informed that the aim of the visit was to check the living conditions of inmates in the aforesaid penitentiary centre and its occupancy level, as well as to verify whether the recommendations made by the CPT delegation as a result of the visit of the previous year had been followed.

Moreover, on the occasion of this meeting, the CPT was given all the documents requested, i.e.:

- Different prison plans, along with the description of the different spaces (cells, offices distribution, infirmary, workshop rooms and classrooms)
- Updated general description of the prison population, including total number of inmates and their distribution according to penitentiary regime and age
- An organization chart of the management board and staff working in the centre, along with its distribution according to the tasks assigned (surveillance, treatment, health-care, etc.)
- Description of the most usual timetable and administrative arrangements of the prison (opening and closing time, meal time, staff shifts, etc)
- Description of the activities carried out by inmates, including timetable and number of participants.

Specifically, the visit to the Male Prison of Barcelona started at 8.45 pm of 19 June with a meeting of the members of the CPT delegation with the director of the centre and other members of the board. *Inter alia*, the Committee made inquiries as to the following aspects: prison overcrowding, number of complaints presented by inmates, procedure for their registration and reply, number of officers working in each shift, resort to restraint means, fixations of inmates carried out during the past July 2011, as well as number of suicides during the current year.

According to the information given by the Catalan Department of Justice, all issues, questions and doubts raised by the CPT delegation were answered and clarified by the board team of the Male Prison of Barcelona. Afterwards, the delegation conducted a visit to the prison premises and its members were able to talk privately with as many inmates as they wished. In addition, during the three days of visit, they met with prison officers and staff of the infirmary.

Finally, on 22 June the members of the CPT delegation met with the Director-General and other members of the steering team within the headquarters of the Directorate-General for Prisons. The aim was to present in general terms the first conclusions of the visit to the Male Prison of Barcelona.

First of all, the CPT highlighted the excellent cooperation provided by the staff of the above-mentioned prison, as well as the possibility they were given to access all kind of documents that they had requested.

The next conclusion of the CPT was that the said penitentiary centre continued to be overcrowded. On this point it must be underlined that this prison receives all detainees on remand of the Barcelona area and that - despite the efforts made both by the prison itself and the Directorate-General to reduce the inmate population - it is almost impossible to lower their number to the ideal rate (approximately 1,200 inmates), as long as the new penitentiary centres in stage of completion are not opened.

In this line, the CPT also requested information concerning the opening schedules of the two new prisons, i.e. the Puig de les Basses Prison, in Girona and the Mas d'Enric Prison, in Tarragona. As regards these centres, it must be stated that the Mas d'Enric Prison is pending completion: kitchen, access and waste-water treatment plant still have to be built. As to the Puig de les Basses Prison, only security checks and supply of part of the furniture lack, due to financial reasons that are delaying the opening of this centre. It must be also added that – despite the transitory overcrowding of the Male Prison of Barcelona – the inmate population in Catalonia has been decreasing for two years. This determined the need to study how to relocate inmates with a view at reducing the occupancy rate of the Male Prison of Barcelona.

Concerning ill-treatment allegedly inflicted on certain inmates, the members of the CPT confirmed that, in general terms, their impression was that no ill-treatment had been perpetrated. However, they stated that some prisoners had referred to some galleries where ill-treatment would have been inflicted. On this point it must be highlighted that inmates were making reference to the gallery where the Closed Regime Special Department is located. In this unit, hostile inmates are isolated and – in some occasions – restraint methods are employed using the minimum of force strictly needed to avoid self harming or injuries to other inmates or officers. However, this resort to force is perceived by these prisoners as a violation of their rights. On this regard, it must be pointed out that all measures taken are regularly reported both to the Judge for the enforcement of sentences and the Inspectorate of the Directorate-General for Prisons.

Additionally, the members of the CPT suggested that older workers of the Male Prison of Barcelona be retrained. In reply to this recommendation it was stated that the Central Services, through the Centre for Legal Studies and Advanced Training of the Department of Justice, regularly offer retrain and refresher courses to all prison officers in Catalonia.

The Committee also referred to the procedure for fixation used in the Prison of Barcelona. It is a broad question that has been deeply analysed both by the Ombudsman and the *Síndic de Greuges* (Catalan Ombudsman).

On this matter, and in general terms, it must be underlined that fixation is a means commonly used in all prison centres. As regards means of restraint, regimental fixation is one of the most commonly reviewed and supervised, since it implies the resort to prison means that might cause malpractice and – as a consequence – violations of inmates' rights.

It is worth to highlight that throughout Catalonia fixation is only exceptionally used: approximately 400 cases per year during the last years, i.e. 1.4% of prison population (more than 20,000 inmates).

This measure, along with the other means of restraint, has an exceptional nature. Both prisons boards and judicial authorities are promptly informed of its application and in their decisions there is no evidence of medical negligence or violation of rights in Catalan prisons, according to the Spanish legislation in force (Article 45 of the *Ley Orgánica* – Act 1/1979, of 26 September, on Prisons and Article 72 of the Royal Decree 190/1996, of 9 February, on Prison Regulations).

In addition to this legal framework, Circular 1/2007 of the Directorate-General for Prisons regulates the procedure for regimental fixation and states in its preamble:

“In any case, as regards inmates, the guiding principles of human dignity and fundamental rights, as well as the prohibition of any form of torture and inhuman or degrading treatment or punishment shall be respected”.

Concerning the duration of fixation, Article 71 of the Prison Regulation details the general principles to apply this measure and expressly states:

“Security measures shall be in line with the principles of necessity and proportionality and shall be implemented in the full respect of dignity and fundamental rights, especially in the event of measures directly applied to persons”.

Further, the afore-mentioned Circular sets out that all movement restrictions shall last for the time strictly necessary. In particular, one of the guidelines contained in the Circular underlines that *“it is conceived as a measure of limited duration that cannot be extended once the reasons justifying its adoption have disappeared. In no way shall it constitute a disguised sanction”.*

As a result, Catalan penitentiary centres, showing responsibility and commitment to lawful professional praxis in the public sector, have adopted legal instruments banning the resort to those methods and mechanisms that protocols or national and international rules prohibit or advise against, as they may harm inmates. The aim is to ensure the full respect for human dignity and the fundamental rights of people.

As regards disciplinary proceedings, the Committee maintains that in the Male Prison of Barcelona some cases of solitary confinement were to be found. In particular, an inmate had remained under solitary confinement for 42 days without interruptions. This situation is considered as a violation of his/her rights. As a consequence, the Committee recommended that the duration of such measure does not exceed 14 days.

In reply to this recommendation, it was stated that such cases usually reflect exceptional circumstances and are justified by an altered and hostile behavior of inmates, along with the danger that they may pose. In any case, the application of such measure needs to be previously and promptly notified to the judicial and administrative authorities. Moreover, it is worth to add that, according to the Law, in those cases where solitary confinement exceeds 14 days, an authorisation from the Court shall be requested and obligatory medical examinations carried out.

Finally, reference was made to the need for a more rigorous formal system for complaints presented by inmates and replies to them by the Prison Administration. On this point, it was answered that inmates in Catalonia enjoy different possibilities to file complaints for any malfunctions. These claims can be lodged against: prison officers and legal assistants of the penitentiary centre, Ombudsman, Directorate-General for Prisons, Court in charge of the execution of sentences, Legal Assistance Bureau – specific office for prison population -, *Síndic de Greuges*, etc. But, paradoxically, inmates of the Prison of Barcelona present – on average – fewer complaints, requests and claims than Catalonia as a whole.

In conclusion, the Directorate-General for Prisons of the Catalan Government appreciates the suggestions, recommendations and remarks made by the CPT and is very much committed to dealing with each of the issues raised in order to improve the living conditions of prisoners and ensuring the respect for their rights. The idea is to harmonise these two objectives with the proper functioning of prisons and the respect for the rights of the people and bodies working in the prison sector.