



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 6 to 13 September 2018

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 (2020) 6.

Strasbourg, 4 February 2020

CONTENTS

| | |
|---|-----------|
| EXECUTIVE SUMMARY..... | 4 |
| I. INTRODUCTION | 8 |
| A. The visit, the report and follow-up..... | 8 |
| B. Consultations held by the delegation and co-operation encountered | 8 |
| II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED..... | 10 |
| A. Law enforcement agencies | 10 |
| 1. Preliminary remarks | 10 |
| 2. Ill-treatment..... | 11 |
| 3. Safeguards against ill-treatment | 12 |
| a. introduction..... | 12 |
| b. notification of custody | 13 |
| c. access to a lawyer | 14 |
| d. access to a doctor and healthcare in detention..... | 15 |
| e. information on rights | 17 |
| f. access to interpretation | 17 |
| 4. Conditions of detention | 18 |
| B. Prison establishments | 21 |
| 1. Preliminary remarks | 21 |
| 2. Prison establishments for men | 22 |
| a. ill-treatment..... | 23 |
| b. means of restraint..... | 30 |
| c. conditions of detention | 34 |
| <i>i. prisoners subject to closed regime and accommodated in DERTs.....</i> | <i>34</i> |
| <i>ii. prisoners subject to an ordinary regime</i> | <i>38</i> |
| d. Health care services | 38 |
| e. Other issues..... | 43 |
| <i>i. prison staff.....</i> | <i>43</i> |
| <i>ii. discipline</i> | <i>44</i> |
| <i>iii. contact with the outside world</i> | <i>46</i> |
| <i>iv. complaints and inspection procedures.....</i> | <i>46</i> |
| <i>v. foreign prisoners</i> | <i>47</i> |

| | | |
|----|---|-----------|
| 3. | Prison establishments for women..... | 48 |
| a. | ill-treatment..... | 49 |
| b. | admission procedure | 51 |
| c. | conditions of detention | 52 |
| | <i>i. prisoners subject to closed regime and accommodated in DERTs.....</i> | <i>52</i> |
| | <i>ii. prisoners subject to an ordinary regime</i> | <i>53</i> |
| d. | health care services | 55 |
| e. | prison staff | 57 |
| f. | Other issues..... | 57 |

APPENDIX:

| | |
|--|-----------|
| List of the authorities and non-governmental organisations with which the CPT's delegation held consultations | 60 |
|--|-----------|

EXECUTIVE SUMMARY

In the course of the 2018 visit, the CPT's delegation reviewed the treatment of persons deprived of their liberty by the police and looked into the effectiveness of the safeguards afforded to such persons. Further, the delegation visited four prison establishments, focusing in particular on the situation of prisoners placed in special and closed regime departments (*Departaments Especials de Règim Tancat*) and on women prisoners. The co-operation provided by the Spanish and regional Catalan authorities in facilitating the visit was excellent.

Law enforcement agencies

The vast majority of persons met by the CPT's delegation stated that they had been treated correctly when detained by *Mossos d'Esquadra* officers. However, the delegation once again received a number of allegations of ill-treatment, consisting mainly of kicks and punches to the head and body and blows with truncheons to the body, usually at the moment of apprehension after the persons concerned had been brought under control. The CPT's delegation also received a few specific allegations from inmates interviewed separately that they had been beaten with truncheons while subjected to an unauthorised means of restraint they referred to as the "*bocadillo*" (while restrained by the ankles, sandwiched between two plastic mattresses bound together by Velcro straps). The CPT recommends that the Catalan regional authorities deliver a strong message that the ill-treatment of detained persons is illegal, unprofessional, and will be the subject of appropriate sanctions.

In respect of safeguards against ill-treatment of persons deprived of their liberty by the police, the CPT welcomes the proactive steps taken by the Catalan regional authorities to ensure that the rights of persons detained by the *Mossos d'Esquadra* are respected as well as to enhance the implementation in practice of those rights. Nevertheless, at "Les Corts" in Barcelona, it found instances of unjustified delays (of 12 hours or more) in notifying third persons nominated by detainees. There is also a need to improve access to a lawyer in practice, through improved co-operation with the Bar Associations. As regards the right of access to a doctor of one's own choice, this should be adequately reflected in law and, in light of the 2018 findings, on-site healthcare at "Les Corts" reinforced and the confidentiality of medical consultations guaranteed. More generally, a system whereby experienced police officers are assigned dedicated responsibility for the overall well-being of persons held in the detention area of *Mossos d'Esquadra* stations should be introduced, starting with "Les Corts" in Barcelona.

As regards conditions of detention in police stations, the main deficiencies observed during previous visits to *Mossos d'Esquadra* remain, including a lack of access to natural light and inadequate artificial lighting, poor ventilation, inadequate access to drinking water and personal hygiene products and the absence of exercise yards. The CPT notes that a feasibility study of the renovations required is being carried out and recommends that the necessary resources be made available by the Catalan regional authorities to rectify this situation.

Prison establishments

The CPT welcomes the structural steps taken by the Spanish and Catalan regional authorities to reduce the prison population and to end overcrowding in the prison system. At the time of the September 2018 visit, the overall prison population in the autonomous community of Catalonia stood at 8,421 inmates for a capacity of 10,445 places, down from around 10,500 prisoners (and an occupancy level of 110%) in 2012. In the course of the 2018 visit, the CPT's delegation visited Brians 1, Mas d'Enric and Ponent Prisons as well as Barcelona Women's Prison, known as Wad-Ras.

Prison establishments for men

A number of allegations of physical ill-treatment by prison officers were received, notably at Brians 1 Prison. These mainly concerned slaps, punches and blows with truncheons to various parts of the body involving inmates who were agitated, exhibited aggressive behaviour and/or had been involved in inter-prisoner violence / incidents of self-harm. Increased vigilance by prison management is required to address this problem, including by ensuring the regular presence of prison managers in detention areas, increased direct contact with prisoners, the prompt and thorough investigation of complaints made by prisoners, and improved prison staff training. It is also important that the prison health care services systematically record and report injuries to prisoners in line with Instruction 02/2018 of the Catalan Prison Service (DGSP) and that allegations of ill-treatment are effectively investigated.

As regards the use of mechanical fixation in prisons, the CPT has taken note of the DGSP's intention to reduce progressively the resort to such a measure. In the course of the 2018 visit, the CPT's delegation observed a slight decrease in the number of times inmates had been fixated and that the average duration of the measure had declined significantly. That said, the Committee's ongoing concerns about this practice include the sufficiency of the reasons given for the use of fixation measures, the continued use of methods that may cause serious injuries to inmates, the role of doctors in condoning fixation, and systematic non-compliance with existing safeguards. Further, it remains worrying that fixated prisoners are receiving intra-muscular injections without any attempt being made to seek their consent or to explain to them the purpose of the medication.

The findings from the 2018 visit indicate that resort to mechanical fixation in the prisons visited retains clear punitive elements and that the measure still does not comply with the relevant legal provisions (i.e. Article 72 of the Prison Regulations). Therefore, the CPT reiterates that the practice of mechanical fixation of inmates for security reasons should be ended. Pending its abolition, the CPT recommends that certain safeguards surrounding the current application of the measure be strengthened, such as: limiting its duration to minutes; introducing stricter criteria for the resort to the measure and ending the practice of forced medication.

In respect of prisoners accommodated in special closed-regime departments (*Departaments de règim tancat* or DERTs), Circular 02/2017 foresees a more individualised approach and the reinforcement of safeguards surrounding their placement in a DERT. The CPT found that further steps were required to fully implement this Circular. More emphasis should be placed on developing a purposeful regime to promote inmates' reintegration into an ordinary regime module. Also, staff assigned to a DERT should in principle be affiliated to the module on a regular basis and be able to provide activities throughout the year. Further, as foreseen by the Circular, inmates affected by mental health disorders should either be placed in a medical setting or be provided with increased attention by specialised staff.

As regards the provision of health care in prisons, the CPT found that the Primary Health Care Team (EAPP) in each prison mirrored the care provided in the community. Nevertheless, the confidentiality of medical consultations and access to a doctor for prisoners in the DERTs should be improved, and mentally ill prisoners accommodated in infirmaries should be provided with a full range of occupational therapy activities, which also requires having adequately trained nurses. Steps should also be taken to safeguard the doctor/patient relationship in prisons and to end health care staff certifying prisoners fit for punishment. It is also necessary for an analysis of each death in prison to be carried out in order to consider what lessons may be learned for the prison establishment. In this respect, prisons should systematically be provided with the conclusions of autopsy reports.

The CPT highlights deficiencies in the staffing situation at Brians 1 Prison and deplores a campaign of intimidation directed by some prison staff against senior managers at that establishment. As regards discipline, the CPT welcomes a commitment to review punishments imposed to ensure that they more closely accord with the disciplinary offences of inmates. At the same time, it would be preferable to lower the maximum period of solitary confinement permissible under national law to 14 days as a disciplinary punishment for a single incident. The CPT also comments that supervisory judges appeared merely to certify the decisions of the prison administration and not to examine the proportionality and appropriateness of the measures. It requests that this information be transmitted to the Inspection Services of the State Judicial Council (*Consejo General del Poder Judicial*).

Prison establishments for women

At the outset, the CPT sets out the importance of developing an alternative prison policy oriented toward women's particular biological and gender-specific needs and vulnerabilities. The Catalan regional authorities should take active steps to develop a gender specific approach towards women prisoners. When developing new approaches to gender sensitive risk assessment and the classification of prisoners, account should be taken of the fact that women generally pose a lower security risk than men.

Further, the CPT recalls that women prisoners have a higher prevalence than men of mental illness, drug dependency and self-harm, and that many are victims of sexual and other gender-based violence. Hence, the rules regulating the admission process should contain gender specific provisions for women and screening upon admission should identify any vulnerabilities. Such an approach was not in evidence at the time of the visit, and the CPT recommends that the admission procedures at Wad-Ras, Brians ,1 Ponent and other prisons accommodating female inmates take into account the gender-specific needs of women prisoners. This should include screening for sexual abuse or other forms of gender-based violence inflicted prior to entry to prison and ensuring that such information is considered in the drawing up of a care plan for the woman in question.

In the course of the 2018 visit, the vast majority of women prisoners met stated that they were treated correctly by prison staff but a few allegations of physical ill-treatment and excessive use of force were received at Brians 1 and Ponent Prisons. Appropriate measures should be taken to upgrade the skills of prison staff in averting crises and defusing tension and in safe methods of control and restraint. Regarding the use of mechanical fixation, the concerns raised above apply equally to women prisoners. Women met in Brians 1 and Ponent Prisons who had been fixated face down were clearly distressed by the whole experience and yet in none of the cases examined had there been a proper debriefing following the termination of the measure. Further, several of the women to whom the measure of fixation had been applied had serious mental health disorders.

For women prisoners subject to a closed regime and accommodated in a DERT, there is a need to provide a specifically tailored range of educational, recreational, sport and workshop activities in line with the provisions of Circular 02/2017. As regards the ordinary regime in the three women's establishments visited, the material conditions could be considered generally adequate although there is a need to reduce the occupancy levels at Wad-Ras Prison. Further, the basement cells in this prison were dilapidated and filthy as well as being unsafe, and should no longer be used to accommodate prisoners overnight. In respect of the regime, there was good out-of-cell time but more needs to be done to develop the range of non-gender-stereotyped purposeful activities available to female prisoners. At Brians 1 Prison, the lack of differentiation, resulting in all types of prisoner being mingled together regardless of their needs and the challenges they posed, contributed to a sense of insecurity and fear, and should be addressed. On the positive side, the CPT found that the mother and baby unit at Wad-Ras Prison represented good practice.

Health care services available to women prisoners were generally of a good standard. The CPT is interested to learn more about the plans underway to put in place a more intensive programme for women's health. For women with a mental health disorder accommodated in the "polyvalent unit" in Wad-Ras Prison, the CPT recommends that they should be transferred to a psychiatric institution. If it is necessary to accommodate them in the prison for short periods, the "polyvalent unit" should be staffed by mental health care professionals who can provide support and occupational activities for the women. The CPT noted that in the prisons visited, cutting and other forms of self-harm were prevalent among women inmates and it recommends that a policy on preventing and reducing instances of self-harm of women prisoners be adopted and instituted in all establishments. Further, women who self-harm or who are at risk of self-harming should be afforded the necessary support by staff; that is, they should always be dealt with from a therapeutic standpoint and not a punitive one.

In all the prisons visited there was mixed-sex staffing which, as a rule, the CPT supports. Nevertheless, all custodial staff working with women prisoners should receive gender-specific training and greater efforts should be invested to increase the overall ratio of female prison officers and especially of female prison officer managers.

Contacts with the outside world are generally good within Catalan prisons. Nevertheless, given that women prisoners are far more likely than male prisoners to be the primary carers for any children they might have, the CPT considers that the prison administration should modernise their approach to this issue, including by examining the possibility for prisoners, notably foreign nationals, to maintain contact with their families through using Voice over Internet Protocol (VOIP) and of being able to make calls to mobile phones from prison. Further, in light of the high number of foreign national women prisoners, every effort should be made to offer these women the possibility to be transferred back to their countries of origin to serve their prison sentence.

I. INTRODUCTION

A. The visit, the report and follow-up

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 6 to 13 September 2018, which was considered by 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:

- Mark Kelly, 2nd Vice President (Head of the delegation)
- Vânia Costa Ramos
- Therese Rytter
- Hans Wolff.

They were supported by Régis Brillat, Executive Secretary, Hugh Chetwynd, Head of Division, and Christian Loda of the CPT’s Secretariat, Rachael Pickering, Secure Environment Doctor, United Kingdom (expert), and Ines Caravia, Mary Fons i Fleming, John Matthews and Felix Ordeig (interpreters).

3. The list of police and penitentiary establishments visited by the CPT’s delegation can be found in the Appendix.

4. The report on the visit was adopted by the CPT at its 98th meeting, held from 4 to 8 March 2019, and transmitted to the Spanish authorities on 20 March 2019. The various recommendations, comments and requests for information made by the CPT are set out in bold type in the present report. The CPT requests the Spanish authorities to provide within six months a response containing a full account of action taken by them to implement the Committee’s recommendations and replies to the comments and requests for information formulated in this report.

B. Consultations held by the delegation and co-operation encountered

5. In the course of the visit, the delegation held consultations with Miquel Buch, *Conseller* of the Department of the Interior of the autonomous regional government of Catalonia (*Generalitat de Catalunya*), Esther Capella, *Conseller* of the Department of Justice, Miquel Esquiú, Director General of the *Mossos d’Esquadra* and Armand Calderó, Director General of Penitentiary Services, as well as with other senior officials from these Departments. The delegation also met representatives of the Office of the Delegate of the Government of Spain in Catalonia. Meetings were also held with the Catalan Ombudsman (*Síndic de Greuges*) Rafael Ribó, and with representatives of civil society active in areas of concern to the CPT.

6. The co-operation provided by the Spanish and regional Catalan authorities in facilitating the visit was excellent. The delegation was granted immediate access to the detention facilities it wished to visit and to the persons it wanted to interview, and the information required to carry out its task was promptly provided. The delegation also appreciates the assistance provided before and during the visit by the CPT's liaison officers both at central and autonomous community levels.

7. At the end of the visit, the delegation presented its preliminary findings to the Catalan regional authorities. At that meeting, in light of the seriousness of the allegations of ill-treatment of prisoners received at Brians I Prison, the CPT's delegation invoked Article 8, paragraph 5 of the Convention and requested the Directorate of Penitentiary Services to carry out an external review of the treatment of prisoners deemed to be challenging or recalcitrant and transferred to closed regime departments.

Further, the CPT's delegation had requested that protective action be taken with respect to two specific prisoners whom it considered had a well-founded fear of being subjected to retaliatory measures from certain prison officers. One of the two prisoners bore injuries allegedly inflicted by prison officers after he had spoken for the first time to the CPT's delegation. Regarding this matter, the CPT appreciates the rapid and responsible manner in which the Director of Brians 1 Prison acted to address these concerns and to find a solution whereby these two prisoners were transferred by the *Mossos d'Esquadra* to safer environments in other establishments.

By communication of 12 November 2018, the Catalan regional authorities provided information on the action taken in respect of the above immediate observation as well as on other matters raised by the CPT's delegation in its preliminary observations. This information has been taken into account in the relevant sections of the present report.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Law enforcement agencies

1. Preliminary remarks

8. The Catalan Autonomous Police (*Mossos d'Esquadra*), which operates under the authority of the *Generalitat de Catalunya*, has been responsible for all policing matters in Catalonia since 2008, apart from border controls, immigration and counter-terrorism. The *Mossos d'Esquadra* has some 16,500 officers and operates 90 police stations throughout Catalonia.

The fundamental legal framework governing deprivation of liberty by law enforcement agencies in Catalonia remains the same as that in the rest of Spain.¹ Criminal suspects may be held in custody by law enforcement agencies for up to 72 hours and this custody may be extended by judicial decision for a further 48 hours in respect of offences referred to in Article 384 bis of the CCP, i.e. “membership or relationship with armed groups or terrorist or rebellious individuals”.

In 2018, the CPT’s delegation visited the *Mossos d'Esquadra* Stations in Lleida and Tarragona for the first time and carried out follow-up visits in Barcelona to “Les Corts” and the *Ciutat de la Justícia* (Justice City) holding cells for adults and children. It also interviewed many prisoners on remand who had recently been held in a police station.

9. The CPT’s delegation did not visit any municipal police (*Guardia Urbana*) stations but, in the course of the visit, it did receive a number of allegations of ill-treatment by its officers. Further, it was informed that as the municipal police was supposed to transfer arrested persons immediately to the *Mossos d'Esquadra*, they did not inform detained persons of their rights or provide them with any safeguards. However, persons met by the delegation claimed that they had spent several hours or more with the municipal police after being arrested and before being transferred to the *Mossos d'Esquadra*.

The CPT recommends that all persons detained by the municipal police be informed of their rights from the outset of their deprivation of liberty and, if they are not immediately transferred to the *Mossos d'Esquadra*, afforded the possibility to exercise these rights.

¹ See Spanish Constitution, Articles 17 (2) and 55 (2), and Code of Criminal Procedure (CCP), Articles 520 and 520 bis. The procedural safeguards offered to persons subject to criminal proceedings were recently strengthened by Organic Laws 5/2015 and 13/2015 which amended certain provisions of the CCP, notably Article 520, and transposed EU Directive 2012/13/EU into national law. See CPT/Inf (2017) 34, paragraphs 7, 11, 13 and 16.

2. Ill-treatment

10. The vast majority of persons met by the CPT's delegation stated that they had been treated correctly when detained by *Mossos d'Esquadra* officers. However, the delegation once again received a number of allegations of ill-treatment. The ill-treatment alleged consisted mainly of kicks and punches to the head and body and blows with truncheons to the body, usually at the moment of apprehension after the persons concerned had been brought under control. Several allegations of excessively tight handcuffing² were received as well as of degrading/disrespectful treatment³ and of verbal abuse by police officers. Several persons met in the prisons visited displayed injuries that were consistent with their allegations of having been ill-treated by the *Mossos d'Esquadra* at the time of apprehension.

For example, a man (KPE) at "Les Corts" who was apprehended on the night of 8-9 September 2018 in Barcelona, alleged that when he refused to take an alcohol test a *Mossos d'Esquadra* officer hit him in the right eye with his elbow. When met by the CPT's delegation the next day, he complained of pain in his right eye and around both wrists, and said that he could not see clearly out of his right eye. Upon examination by one of the delegation's doctors, he displayed oedema over the cornea of the right eye and bruising around the right eye. On his wrists, there was tender linear-patterned erythema (redness) encircling much of both wrists, swelling and linear point abrasions around much of the right wrist and right ulnar nerve neuropraxia (temporary dysfunction), which could be consistent with prolonged and/or tight handcuffing. The delegation informed the responsible police officers at "Les Corts" that the person required an urgent ophthalmological assessment.

11. The CPT recognises that the arrest of a suspect is often a hazardous task, in particular if the person concerned resists and/or is someone whom the police have good reason to believe may be armed and dangerous. The circumstances of an arrest may be such that injuries are sustained by the person concerned (and by police officers), without this being the result of an intention to inflict ill-treatment. Further, injuries can be sustained by the suspect prior to the apprehension by the police.

Nevertheless, the CPT considers that, from the perspective of preventing ill-treatment, all injuries on newly arrived detained persons to police custody should be properly recorded and investigated. The CPT recalls that no more force than is strictly necessary should be used when effecting an arrest. Furthermore, once arrested persons have been brought under control, there can be no justification for them being struck by police officers.

In light of the information gathered during the 2018 visit, the CPT recommends that *Mossos d'Esquadra* officers be regularly reminded of these basic principles, including through practical training exercises. The CPT recommends that the Catalan regional authorities deliver a strong message that the ill-treatment of detained persons is illegal, unprofessional, and will be the subject of appropriate sanctions. A similar approach of zero-tolerance to verbal abuse of detained persons should also be enforced. Further, the authorities should ensure that an investigation is systematically carried out into every allegation of ill-treatment and that senior officers are held accountable for their line-management responsibilities.

² Two women met at Wad-Ras Prison still bore visible marks from handcuffs a week after their apprehension.

³ Several women complained of having been made to stand while partially un-clothed in the presence of male police officers for periods of an hour or more when they were apprehended in their homes.

In addition, the CPT reiterates its recommendation to the Catalan regional authorities that where it is deemed necessary to handcuff a person at the time of apprehension or during the period of custody, the handcuffs should under no circumstances be excessively tight⁴ and should be applied only for as long as is strictly necessary.

12. The CPT's delegation received a few specific allegations from inmates interviewed separately that they had been beaten with truncheons while subjected to an unauthorised means of restraint known as the "*bocadillo*"⁵ in Tarragona District Police Station. The allegations dated from January and May/June 2018. They alleged that, after first having their ankles and wrists bound with Velcro straps and a helmet put over their heads, they had been placed between two blue plastic covered mattresses, which were bound around using further Velcro straps, and subjected to numerous truncheon blows. This alleged ill-treatment while restrained was said to have taken place in a shower area, which is not covered by CCTV (unlike in each of the cells where means of restraint are usually applied).

It is also worth noting that the CPT's delegation found two blue plastic covered mattresses with Velcro straps loosely binding them together in a corridor of the "Les Corts" detention area, for which police officers present apparently could not offer an explanation.

Clearly, if this form of ill-treatment of restrained detainees were to be taking place, it would be a matter of grave concern. **The CPT would like to receive the comments of the Catalan regional authorities on this matter.**

3. Safeguards against ill-treatment

a. introduction

13. In the course of this visit, the CPT's delegation reviewed the safeguards afforded to persons deprived of their liberty by the *Mossos d'Esquadra*; namely, the rights of such persons to inform a close relative or another third party of their choice of their situation, to have access to a lawyer, and to have access to a doctor. It also examined whether such persons were informed without delay of all their rights. Particular attention was paid to the application of these rights in light of the 2015 amendments to the Spanish Code of Criminal Procedure, notably Article 520.

Further to these reforms, the Head of the *Mossos d'Esquadra* issued an internal instruction (CI PREP 2646/15) updating the various notification forms issued to detained persons and an awareness campaign targeted at all officers was carried out. The relevant custody form setting out the information of rights provided to detained persons (form N 01) was most recently revised in June 2018 to:

- clearly record whether or not a detained person wishes to exercise each of the rights;
- enable a detained person's request to exercise his or her rights even if initially the person had declined to exercise those rights.

⁴ It should be noted that excessively tight handcuffing, as well as causing local lesions, can have serious medical consequences (for example, sometimes causing impairment of the hands, such as sensory, vascular and/or motor damage).

⁵ *Bocadillo* translates as "sandwich" in English.

The CPT welcomes the proactive steps taken by the Catalan regional authorities to promote and monitor the application of the rights of persons detained by the *Mossos d'Esquadra*, as well as to further enhance their effectiveness. The current system also facilitates a better oversight of the implementation of the key safeguards recommended by the Committee.

14. The CPT has observed that in a number of Council of Europe member States, an experienced police officer responsible for booking a detained person into a detention area is formally responsible for the overall well-being of the detainee. Such a role includes of course ensuring that the detained person is informed of his/her rights and is able to exercise them before being placed in a cell. However, the officer should also enquire whether the detainee has any health-related problems that the police should be aware of before the person is placed in a cell and re-confirm whether or not they wish to see a doctor. The officer should also take careful note of the detainee's physical and mental state and the risk of harm they may pose to themselves or to others. The CPT considers that this is good practice in terms of being able to identify at the outset of detention whether a person may have mental health issues or be at risk of self-harming or attempted suicide. It means that proactive measures can be taken to refer the detainee to a suitable healthcare professional either present in the detention block, on-call or at a nearby hospital. The officers carrying out such a screening task must of course be properly trained to pose the appropriate questions and to recognise and record indicative signs of a person in need of particular support and care.

The CPT recommends that the Catalan regional authorities consider introducing such a system in the detention areas of *Mossos d'Esquadra* stations, starting with “Les Corts” in Barcelona.

b. notification of custody

15. The information gathered during the visit suggests that persons deprived of their liberty by the *Mossos d'Esquadra* are routinely informed of their right to have their custody notified to a third party. However, some persons met at Brians 1, Ponent and Wad-Ras Prisons stated that they had not been able to notify a third person until they arrived at prison. Moreover, several persons, notably at “Les Corts”, stated that they did not know whether or not someone had indeed been informed, as they had received no feedback from the officers on duty. Further, records in the stations visited showed that for those who had asked for their custody to be notified to a third party, this was recorded as having happened fairly promptly at Lleida and Tarragona District Stations. On the other hand, at “Les Corts” the delegation found instances of unjustified delays in notifying third persons nominated by detainees of 12 hours and, in one case, 33 hours. Further, in a number of cases the delegation found that the time at which a person had been notified had not been recorded in the custody record system, or not recorded at all.

The CPT recommends that the procedures at “Les Corts” District Station be reviewed in order to ensure that the right to notify a third party of one's detention is fully effective in practice. Further, steps should be taken to ensure that all persons who exercise the right of notification of custody are subsequently informed whether a communication with a close relative or another third party of their choice has occurred.

c. access to a lawyer

16. The CPT's objective of guaranteeing an effective right of access to a lawyer during police custody is aimed at preventing ill-treatment rather than linked to issues of due process or the right to a defence. In the CPT's experience, it is during the period immediately following the deprivation of liberty - and, *a fortiori*, during which the individual is subjected to police questioning - that the risk of intimidation and ill-treatment is at its greatest.

It follows that to be effective as a safeguard against ill-treatment, access to a lawyer must be guaranteed as from the very outset of deprivation of liberty; further, the lawyer and the detained person must be able to meet in private. An examination of the custody records showed that all detained persons asked for the assistance of a lawyer when they were informed of their rights (i.e. at the outset of their detention) and that the vast majority (95%) had requested an *ex officio* lawyer.

Nevertheless, the delegation found that persons detained by the police in Catalonia still had to wait for hours or more before having access to an *ex officio* lawyer. Many of the persons met by the delegation at "Les Corts" were visibly agitated because they stated they had requested the assistance of a lawyer and yet had received no feedback about the notification or when they would meet with a lawyer. The delegation noted that in 16 of 26 recent cases reviewed during the visit to "Les Corts" the duty lawyer service had only been notified by the *Mossos d'Esquadra* between two and five hours after the detained person had requested the assistance of a lawyer.

Further, it emerged during the visit to "Les Corts" District Station, that the computerised custody record system only recorded the time at which the duty lawyer service was notified that a detained person wished to have legal assistance but not the time at which a lawyer actually attended the police station (or provided advice by telephone/videoconference). *Mossos d'Esquadra* officers confirmed that their practice was to contact the duty lawyer service twice: in the first instance, to notify a request for assistance - the time recorded in the custody records - and, secondly, to inform the duty lawyer system of the time at which it was anticipated that the detained person would be formally questioned about an alleged offence. They also confirmed that, usually, *ex officio* lawyers would still only attend the police station at the time that formal questioning was scheduled to begin. A few detainees (including foreign nationals) claimed that the police questioning had occurred without the presence of a lawyer.

17. In light of the above, it is evident that, notwithstanding the best efforts of the Catalan regional authorities to date, the situation found in the course of the CPT's visit cannot be regarded as meeting in full the CPT's requirements concerning access to a lawyer.

The CPT considers that the Catalan regional authorities might wish to further enhance their system of electronic recording by accurately recording the time at which lawyers actually provide legal assistance to persons deprived of their liberty. Further, co-operation with the Bar Associations should be stepped up to ensure that persons who request the advice and assistance of a lawyer are able to receive such advice and assistance from the very outset of their custody and not only from the time of the first formal scheduled police interview.

The CPT recommends that the Catalan regional authorities ensure that the right of access to a lawyer is effective in practice, taking into consideration the above remarks.

d. access to a doctor and healthcare in detention

18. Form N 01 states that detained persons have the right to be examined by a doctor working for the Public Administration. However, the right of access to a doctor of one's own choice is still not provided for in law. **The CPT recommends that such a right be adequately reflected in law.**

19. In practice, access to a doctor works reasonably well. In almost every *Mossos d'Esquadra* station, access to a doctor depended upon police officers escorting the detained person to the local hospital. At Tarragona District Police Station, this appeared to be done fairly promptly by transferring persons to Santa Tecla Hospital.

The only station with an on-site health care presence was "Les Corts", although that presence had decreased over the past few years and, at the time of the visit, consisted of a general practitioner and a nurse who were present on weekday afternoons up until 19h00. Outside of these hours, health cover was provided at local hospitals. However, the delegation met several detained persons who alleged that their requests to see a doctor had not been addressed within an adequate time period. In addition, there were no protocols in place requiring the healthcare staff to identify and report allegations of police ill-treatment.

Moreover, the CPT has concerns about the way in which medication was stocked, managed and dispensed at "Les Corts"; it appeared that there was no proper inventory of more than 250 medicines. Some of the medication was out of date and psychoactive drugs were not securely held. Further, whenever the nurse was not on duty, a police officer had to transcribe the details of a prescription, its dose and frequency into the police computer system and was also responsible for both dispensing and administering the medication. Police officers spoken to said that they worried about carrying out these tasks, for which they were untrained.

20. The CPT considers that having an on-site presence of a healthcare professional at "Les Corts" is necessary, taking into consideration the size of the custody suite and the number of detained persons having pre-existing health (including mental health) problems,⁶ histories of self-harm, and drug use. The health care staff working in a police custody suite should be supported by appropriate training. Further, in a large, busy custody suite such as "Les Corts" the on-site healthcare presence should be 24/7, and police officers should not have to undertake the duties of nurses and pharmacy technicians.

The CPT recommends that on-site healthcare at "Les Corts" be reinforced to provide full-time coverage from healthcare staff supported by appropriate training. All detained persons with injuries should be seen by a doctor and protocols put in place to guarantee the reporting of any alleged ill-treatment (see also paragraph 43 below).

Further, the practice of police officers carrying out health care duties should be ended. In addition, the current system of storage and management of medication at "Les Corts" should be reviewed.

⁶ The delegation met a person in "Les Corts" who was suffering from drug-induced psychosis but who also appeared to present other co-morbid mental health conditions, including a background learning difficulty (LD) and who was in need of a psychiatric assessment. Given his agitated state, the delegation also suggested that his cellmate be moved to another cell.

21. Further, the delegation noted that medical examinations, whether in the police stations or at a medical centre, still took place in the presence of police officers. The CPT acknowledges that special security measures may be required in a particular case, when a security threat is perceived by medical staff. However, as the CPT has made clear in its previous visit reports, there can be no justification for police officers being systematically present during medical examinations; their presence violates medical confidentiality and is usually unnecessary from a security standpoint. At “Les Corts”, the door to the medical examination room was left open and the delegation observed that police officers stood in the doorway or behind the doctor during the consultation. Alternative solutions can and should be found to reconcile legitimate security requirements with the principle of medical confidentiality. One possibility might be the installation of a call bell, whereby a doctor would be in a position to rapidly alert police officers in those exceptional cases when a detained person becomes agitated or threatening during a medical examination.

The CPT reiterates its recommendation that steps be taken to ensure that all health care examinations are conducted out of the hearing and - unless the doctor concerned expressly requests otherwise in a given case - out of the sight of police staff.

22. Means of restraint (Velcro straps, helmet, handcuffs and feet cuffs) may be applied within a detention area of a *Mossos d'Esquadra* station upon the authorisation of the head of service as regulated by Instruction IO 002 of 27 April 2012. Every application must be reported to the health care services immediately, not last longer than 30 minutes, be the object of continuous supervision by an officer and be recorded. An examination of the means of restraint records at Tarragona *Mossos d'Esquadra* District Police Station indicated that there had been 15 cases in the course of 2017 and the first nine months of 2018, and that the procedures in force appeared to have been followed. The delegation was able to watch the CCTV recording of the most recent case from 11 August 2018 where an agitated man had a helmet placed over his head and was handcuffed after he started banging his head against the cell wall. During the 15 minutes it took for an ambulance to arrive, he continued to bang his head against the wall and during this period the police intervened only to better secure the helmet.

The CPT recognises that it may exceptionally be necessary to apply means of restraint in police detention areas but it has misgivings concerning the current practice observed at “Les Corts”. The cells in “Les Corts” and Tarragona District Police Station contain numerous ligature points and sharp edges, persons subject to restraint can be observed by other detained persons through the cell bars and they are not placed under direct supervision. It would be preferable for a detained person who is very agitated or at risk of self-harming to be placed in a safer cell and subjected to direct supervision until a doctor or ambulance arrives to treat the person. Given that almost half of all persons apprehended and detained by the police in Catalonia in the course of a year are held at “Les Corts”, there is a clear rationale for a safer cell to be installed in the detention area so that agitated persons, who are at risk of harming themselves, may be held securely and in safety.

The CPT would appreciate the comments of the Catalan regional authorities on this subject.

e. information on rights

23. The forms providing detained persons with information on their rights (N 01 and N 01b) have been amended several times in the past few years to take into account the changes to Spanish Law on Criminal Procedure, as detailed above. The CPT particularly welcomes that the new form includes a section that explicitly records whether or not detainees wish to exercise their rights to have legal assistance, notify custody, secure medical assistance and be assisted by an interpreter. The delegation's findings during the visit would suggest that this information was promptly provided to persons deprived of their liberty by the *Mossos d'Esquadra*.

At the time of the visit, translations of the revised forms into other languages had yet to be completed which resulted in persons unable to read Catalan or Spanish not being provided with information. In their written response of 12 November 2018 to the delegation's preliminary observations, the Catalan regional authorities indicated that:

“Regarding the forms, during the Committee's visit the only form available was in Catalan language because it had just been legally updated. However, the multilingual PG-ME's policy consists of translating the forms N 01 and N01.b into English, French, German, Italian, Urdu, Bulgarian, Polish, Russian, Georgian, Arabic, Romanian, Chinese and Albanian. These 13 languages have been the most commonly used in the custody areas in the last two years, according to the study that is periodically extracted from statistical data.

... At the same time, these forms can be found in online version on the corporate intranet.”

The CPT welcomes the availability of the forms on information on rights in the most commonly used languages other than Spanish and Catalan.

f. access to interpretation

24. A considerable number of persons detained by the *Mossos d'Esquadra* are foreign nationals and it is not uncommon that they speak neither Catalan nor Spanish and require the assistance of interpretation services. In their response of 12 November 2018, the Catalan regional authorities stated that “the General Directorate of Police annually contracts a company of translators and interpreters, who provide their services 365 days a year, 24 hours a day, by physical presence in the custody zones”. This is positive. However, the delegation received a number of allegations from foreign nationals that they had had to sign the police interview protocol without having had the assistance of an interpreter. An examination of the custody records of those present at “Les Corts” at the time of the delegation's visit, showed that in none of the seven cases where a detained person had requested the assistance of an interpreter had an interpreter actually been notified despite the request having been made between 8 and 34 hours previously.

The lack of access to interpretation services undermines the operation of the various safeguards in place. Detained persons who request the assistance of an interpreter should be provided with such assistance prior to the time of the first formal questioning by the police.

The CPT recommends that the Catalan regional authorities ensure that in every case where a detained person requests an interpreter, the interpretation service be contacted, and linguistic assistance provided, without delay.

4. Conditions of detention

25. In its reports on the 2007 and 2011 visits, the CPT noted that all *Mossos d'Esquadra* establishments visited were modern purpose-built facilities and were of a similar design and layout. Further, all cells and most of the corridors in the detention areas were covered by CCTV. However, all the establishments had a fundamental design flaw in that the detention areas were located in the basement of the buildings. This remained the case at the time of the 2018 visit.

26. The detention area at the District Station of "Les Corts" contained 35 cells with a capacity to hold 100 detainees; four of the cells, along a separate corridor, were designated for women detainees and a further four cells for juveniles. At the time of the visit, there were 27 men and two women in custody. Most of the cells were some 9.5m² in size, with a concrete plinth running the length of one wall, on which two persons could lie down. There were also a number of larger cells for five detainees.

Once again, the CPT's delegation noted that the absence of any access to natural light due to the custody area being located in the basement is a serious design fault. Further, the artificial lighting in the cells was insufficient for reading purposes. The whole custody area felt hot, airless and musty, with temperatures in the cells around 28°C. In a few of the shared cells there was faecal matter on the floor and vomit on the sleeping plinths, and at least one detainee did not have a plastic mattress but was instead sleeping directly on the concrete plinth.

Each cell had a semi-partitioned toilet but no basin for washing hands. The cell toilet flush system, operated by police officers from a central control panel outside the cells, was not flushed on a regular basis. Detained persons had to shout out every time they wanted the toilet to be flushed. The delegation received complaints about the overwhelming smell in the detention area from almost everyone who had been detained in "Les Corts". At the time of the visit, the toilet in the cell holding two women was blocked and the women who were both menstruating said that they were too embarrassed to ask the male custody officers both to unblock the toilet and to provide them with hygiene products. Indeed, the delegation received a number of complaints from women remand prisoners at *Wad-Ras Prison* in Barcelona who stated that when they had been held in "Les Corts" they had not been supplied with sanitary towels or any means to wash themselves. Further, **there should always be female custody officers on duty whenever women are held in the custody suite**, which was not the case at the time of the visit.

27. The delegation also received many complaints from detained persons that they were not permitted to wash themselves, especially their hands, after using the toilet or before eating, and no alternative means were provided (e.g., wet wipes). "Les Corts" possesses a sanitary facility with a shower and wash basin which, according to the authorities, is available for use by detained persons upon request; however, none of the persons met by the delegation knew of its existence.

The CPT's delegation again received complaints that staff did not provide detained persons with sufficient quantities of drinking water; access to drinking water should not be rationed.

Further, there appeared to be no convincing argument as to why all detained persons were systematically refused access to reading material, especially given the length of time that could be spent in detention. Many persons detained in "Les Corts" appeared to remain in custody for periods of longer than 24 hours.

In addition, the CPT has consistently stated that all persons held in police custody for longer than 24 hours should have access to outdoor exercise; regrettably, no such possibility was available to detained persons at “Les Corts” or at any other station.

28. Lleida and Tarragona District Police Stations contained 11⁷ and 15 cells respectively. In general, most of the structural deficiencies observed at “Les Corts” were also evident in these stations. However, the custody suites were in a better state of cleanliness and hygiene (the Tarragona station was not holding any detained persons at the time of the visit).

29. The CPT’s delegation also visited the *Ciutat de la Justicia* detention areas in the basement of the building. The main area contained 24 holding cells (21 cells with a capacity to hold five persons and three larger cells which could hold up to 10 persons) in which persons being brought to court were held for periods of several hours during the day. At the time of the visit, 23 men and two women transferred from “Les Corts” and four prisoners from Brians 1 and Lledoners Prisons were being held in the cells. Each cell was equipped with a concrete plinth and a floor-level toilet. Ventilation appeared quite poor and the lighting in the cells was a little dim. Detained persons were provided with drinking water upon request and a sandwich at lunch time. In sum, the conditions in the cells were adequate for short stays only.

The Juvenile Detention Centre also located in the basement of *Ciutat de la Justicia* was described in the report on the 2011 visit⁸ and the conditions have not changed. At the time of the visit, no juveniles were being held.

30. To sum up, the main deficiencies observed in the *Mossos d’Esquadra* establishments concern a lack of access to natural light and inadequate artificial lighting, poor ventilation, inadequate access to drinking water and to means of maintaining personal hygiene and no exercise yards. **The CPT reiterates its recommendation that the Catalan regional authorities take the necessary steps to remedy these deficiencies.**

In their response of 12 November 2018, the Catalan regional authorities state that they are “studying the feasibility of implementing the proposed improvements which will involve important and significant renovations. These proposals require an in-depth analysis because they will involve both economic, infrastructure (architectural) issues, as well as security due to both physical and budgetary constraints.”

The CPT, while welcoming this response, recommends that the necessary resources be made available by the Catalan regional authorities to carry out the required renovations. Further, it requests information about the outcome of the feasibility study being drawn up by the *Mossos d’Esquadra*. As regards the exercise yards, the CPT trusts that such a requirement will be taken into account when future police stations with custody suites are developed or when major renovations are carried out to existing custody suites.

⁷ The three cells used for women and minors were separated from the adult male custody area.

⁸ See CPT/Inf (2013) 6, paragraph 115 (sub-paragraph 6).

31. In the course of the visit, the delegation also received several concurring accounts from persons on remand in prison who alleged that, following their apprehension, they had been transported to a *Mossos d'Esquadra* station (e.g. Sabadell and Tarragona), whereupon they had been left in the vehicle handcuffed behind their backs in the underground garage of the station for more than an hour with the windows closed, in stifling conditions, before being brought into the custody suite.

The CPT considers that the rules regarding the transport of detainees should make clear that, for health and safety reasons, detained persons must not be kept in sealed and unventilated vehicles for prolonged periods. It recommends that police officers be reminded of this precept.

B. Prison establishments

1. Preliminary remarks

32. At the time of the September 2018 ad hoc visit, the overall prison population in the autonomous community of Catalonia stood at 8,421 inmates⁹ for a capacity of 10,445 places (i.e. an occupancy level of 80%). This represents a marked turnaround from the situation found at the time of the 2011 and 2012 visits when the population stood at or a little above 10,500 for an overall capacity of around 9,600 places (i.e. an occupancy level of 110%). The decrease in the population is due to several factors: the 2010 amendments to the Spanish Criminal Code and Law on Road Safety¹⁰ led to reduced prison sentences for drug-related offences; the application of alternative measures to imprisonment by courts has increased; and the number of foreign inmates benefiting from a non-custodial measure has been increasing since 2010.¹¹ Further, the possibility for foreign nationals to have their criminal sanction commuted to a deportation order has also contributed to an overall reduction in the prison population.¹² The proportion of remand prisoners has decreased from 18.6% in 2011 to 15.6% at the time of the 2018 ad hoc visit due to the increased resort to alternatives to pre-trial detention. The CPT welcomes the structural steps taken by the Spanish and Catalan regional authorities to reduce the prison population and to end the state of overcrowding that had existed in the prison system.

33. In the period since the CPT's 2012 visit, two new prison establishments have been inaugurated: Puig de las Basses Prison in Girona, with a capacity of 1,018 places, and Mas d'Enric Prison in Tarragona, with a capacity of 1,020 places. In addition, two open regime establishments have been opened in Girona and Tarragona, with a capacity of 124 and 120 places, respectively. In April 2017, the large remand prison, known as Modelo, located in the centre of Barcelona, was finally closed. This prison had been the subject of repeated critical reports, notably by the CPT, due to its severe overcrowding and poor conditions for many years.¹³ As a result of the closure of Modelo Prison, most of the male remand prisoners from the Barcelona judicial catchment area are now accommodated in Brians 1 Prison. Catalonia now possesses a modern prison estate in which nearly all the establishments have been opened since 1990, with Barcelona Women's Prison being the main exception (see Section 3 below).

⁹ That is, an incarceration rate of 113 per 100,000 inhabitants based on a population of 7.44 million (Eurostat).

¹⁰ See paragraph 39 of the CPT's report on the 2016 periodic visit to Spain - CPT/Inf (2017) 34.

¹¹ Around 65% of the reduction of the prison population is due to foreign inmates benefiting from a non-custodial measure or from having their sentence commuted to a deportation order.

¹² The Law provides for the expulsion of a foreigner as a substitute for prison sentences for over a year (and up to six years) or the payment of a fine in accordance with Article 57(2), (4) and (7) and Article 89 of the Penal Code, as amended by Organic Law 5/2010.

¹³ See the report on the June 2012 ad hoc visit in respect primarily of Modelo Prison CPT/Inf (2013) 8.

34. At the outset of the visit, the Catalan Directorate General for Penitentiary Services (DGSP) informed the CPT's delegation about various measures taken since the previous visit in 2012. Emphasis was placed on the message of zero tolerance of ill-treatment of inmates being reiterated to staff, the rolling out of a training programme for health care staff on the documentation of injuries observed on inmates in accordance with the Istanbul Protocol (see paragraph 43); the development of five thematic guides of action for staff¹⁴ (on communication skills in crisis situations, application of means of restraint, mechanical fixation of an inmate to a bed, extinguishing a cell fire and the operation of special intervention units). In addition, a new Circular 02/2017 on the operation of special closed-regime departments (*Departaments de règim tancat* or DERTs) (see Section 2.c. below) was adopted and the drafting of a new circular on the application of mechanical fixation of inmates (see Section 2.b. below) was in progress. These various measures have been taken into account in the drafting of the current report.

2. Prison establishments for men

35. In the course of the 2018 ad hoc visit, the CPT's delegation visited the following male prison establishments:

Brians 1 Prison is located in the Municipality of Martorell, around 35 kilometres west of Barcelona. The establishment has five self-contained modules and a half-way house, as well as a 67-bed psychiatric unit (UHPP or Hospital Unit for Penitentiary Psychiatry). The prison also included a closed-regime/special department, known as *Departament de règim tancat* or DERT. There is also a separate women's unit, located in the south-east corner of the prison complex, with a capacity to accommodate 200 prisoners (see section 3 below); it also contained a small DERT for women. At the time of the visit, the prison accommodated 1,103 inmates (663 of whom on remand detention) including 124 female prisoners for an overall capacity of 1,426 places. Some 54% of prisoners were foreign nationals.

Mas d'Enric Prison, located around seven kilometres north of the city of Tarragona, was opened in 2016. The establishment, architecturally similar to the majority of recently constructed prisons in Spain, had 14 two-storey accommodation modules, each containing 72 cells and an outdoor yard. At the time of the visit, it accommodated 761 inmates (including 31 females¹⁵), of whom 111 were on remand detention for an overall capacity of 1,020 places. Some 42% of prisoners were foreign nationals. The establishment included a DERT module.

Ponent Prison, located in the city of Lleida, was created through the merger in 1991 of two establishments (Lleida 1 from 1954 and Lleida 2 from 1984). Most male prisoners were accommodated in four two-storey modules dating from the 1980s while prisoners receiving treatment for drug misuse and women inmates (see Section 3 below) were held in modules dating from the 1950s. There was also an open regime unit and a 96-cell DERT. At the time of the CPT's visit, the prison accommodated 629 inmates (including 23 females) of whom 72 were on remand detention for a capacity of 800 places; some 311 prisoners were foreign nationals.

¹⁴ *Guies d'Actuació Penitenciària*.

¹⁵ The women's unit was not visited by the delegation.

a. ill-treatment

36. In the course of the visit, a number of allegations of physical ill-treatment were received at all the establishments visited but notably at Brians 1 Prison. The physical ill-treatment alleged consisted mainly of slaps, punches and blows with truncheons to various parts of the body and concerned inmates who were apparently in an agitated state and exhibiting aggressive behaviour or who were involved in inter-prisoner violence or incidents of self-harm. A number of these allegations concerned inmates who had resisted actively or passively being transferred to the DERT after displaying disobedient behaviour. Further, several inmates alleged that they had been injured by staff while being mechanically fixated to a bed.

37. In a number of cases, the delegation gathered medical evidence and/or other documentation which was consistent with the allegations of ill-treatment made by the prisoners with whom it had met. The cases below are mentioned for the purposes of illustration.

- i. An inmate [A] met by the CPT's delegation at Brians 1 Prison stated that, on 12 August 2018, he had overslept the head count in the admission module, (apparently due to the medication that he had taken the night before). Subsequently, a group of prison officers had entered his cell and had allegedly slapped him on both cheeks telling him that a disciplinary report would be filed against him. He had been handcuffed and transferred to the DERT where he was placed in provisional isolation for four hours. The injury report of the inmate in question, drawn up in accordance with the recent Instruction 02/2018 for the purpose of notifying the judicial authorities, included the inmate's allegation about physical ill-treatment having been inflicted upon him by a prison officer, noted: *"4 cm x 1 cm bruise of the left cheek, circular bruise 0.5 in diameter on the left cheek 8 cm below the previous one"*.
- ii. An inmate [B] with a mental health disorder met in the DERT of Mas d'Enric Prison alleged that on 5 September 2018, after he had insulted and struck a staff member and broken the glass of the in-cell light, a group of four prison officers in full riot gear had entered his cell and immediately begun hitting him with truncheons. According to the official incident report it took 33 minutes for the four prison officers to immobilise and restrain (i.e. handcuff) the inmate in question after which he was transferred to the immobilisation cell where he was fixated face down to a bed with straps with his legs pulled over the bed in a way that caused pressure over his shins and subsequently he was forcibly injected by a doctor. He was fixated for 18 hours during which time he claimed that he had to urinate in his clothes.

The medical report drawn up by the prison doctor at the time of the first check on the inmate after his fixation recorded several injuries.¹⁶ When examined by one of the delegation's doctors on 10 September, the inmate displayed the following injuries which were supportive of his allegations of being hit with truncheons and mechanically fixated in the manner described above: on the down length of the front of the right forearm: tender red bruise, brighter and slightly wider at the superior end (1 cm x 5.5 cm) and a mottled, tender red bruise with some proximal and central thinning with suggestion of tram-tracking (1.3 cm x 3.5 cm); on the back of the right forearm: mottled, tender red and yellow brush abrasions running diagonally underneath point of elbow (0.25 cm x 4.0 cm) with skin heaping at distal end and some intermittent scabbing; on the front of the left forearm: tender thin red mottled bruise, brighter at proximal end (7 cm) and linear point abrasions (1 cm); on the back of the left forearm: linear red scab surrounded by erythema (9.8 cm); on the front of the left knee: linear point abrasion above medial aspect of joint surrounded by faint yellow bruising; on the front of the right knee: curved point abrasion (end-to-end direct distance 3 cm) surrounded by yellow bruising; on the right shin: running down upper shin, interrupted linear point abrasion covered in scabbing (3 cm) and irregular collection of lacerations, with some scabbing and surrounded by erythema (2.5 cm x 2.5 cm); on the left shin; running down mid-third of left shin, two linear collections of petechiae (3 cm and 6.6 cm long).

The inmate said that he had filed a complaint to the supervisory judge about this incident.

- iii. An inmate [C] met by the delegation at Ponent Prison stated that on 26 August 2018, following an altercation with another inmate in his module, he had been transferred to the DERT and fixated to a bed. He alleged that, while he was being fixated, two prison officers wearing gloves punched him several times on various parts of his body. The prison medical record of the inmate in question drawn up at Ponent Prison after the cessation of the fixation measure included the following entry: "*erosion erythema of the left cheek and different scratches of the left posterior thoracic region. The patient refers to a contusion of the inferior level of the right hemi-thorax and right lumbar region and reacts in pain to palpation*". The inmate said that he had filed a complaint to the supervisory judge about this incident.

¹⁶ The report in question reads as follows: "*Multiple bruises with an ecchymotic basis can be observed on both arms as well as on the dorsal part of the thorax. The inmate also displays a tram line hematoma of the left forearm with no subcutaneous cellular tissue and no active bleeding*".

38. The CPT's delegation also received some allegations of deliberate ill-treatment by staff which were not linked directly to prisoners acting in a violent or agitated manner. For example:

- i) An inmate [D] met by the CPT's delegation at the DERT of Mas d'Enric Prison alleged that on 28 August 2018, after having repeatedly requested the assistance of a doctor through the internal interphone, the head of service of the DERT entered his cell and using his portable walkie-talkie hit the prisoner on the forehead. When examined by one of the delegation's doctor on 10 September 2018, the inmate displayed three scabs in a line (totalling 2.5 cm long): the marks exactly match the prominent features of the short edge of the base of the standard walkie-talkie in use at Mas d'Enric Prison.
- ii) Another inmate [E] met by the CPT's delegation at Brians 1 Prison stated that at the time of his admission on 12 August 2018, a female prison officer who had noted "gender violence" on his charge sheet started insulting him. She apparently put on her black gloves and slapped his cheeks several times; one of the slaps had allegedly split open his lower lip. Subsequently, four male officers forced him to the ground to try to remove his shoes. One of the officers allegedly bent his knee and pulled up his foot, causing a sudden, severe pain in front of his left hip, down his left thigh to his knee, and another officer put him into a right elbow lock and slammed the right side of his head into the wall. He was taken to the strip-search area where he was ordered to take his clothes off and to drop each item of clothing one at a time on the ground; each time he did so, he was slapped for dropping his clothing. The inmate was later transferred to the DERT where he spent four consecutive days in a single cell in provisional isolation. When examined by one of the delegation's doctors on 7 September 2018, the inmate displayed the following injuries: a pink scar on the lower lip (1.5 cm long), a pink scar with a central burst pattern that had not been sutured on the right wrist (0.5 cm x 0.3 cm), tenderness of the left fifth metacarpal shaft, a healing laceration that had not been sutured over the left little finger's proximal inter-phalangeal joint, and a pencil-point thickness, pink linear scar above the right buttock (3 cm). Further, the inmate had clear signs of rupture of one of his left anterior thigh muscles¹⁷ and damage to his left knee's lateral collateral ligament, which together were consistent with the allegation of having his knee forcibly twisted and pulled up with his hip out straight. The inmate's injuries had also been described in less detail by the prison doctor and communicated to the relevant judicial authorities (Court in Martorell) on 14 August 2018 in accordance with the provisions of Instruction 02/2018.

39. In addition to the cases described above, several other inmates met by the delegation at Brians 1 Prison alleged that they had been physically ill-treated after being taken to a specific room of the admissions module. The alleged ill-treatment apparently followed a specific pattern consisting of slaps to the face and punches to the body by staff wearing black gloves and took place in the room where inmates were strip-searched. The CPT's delegation found that the room concerned was exactly as described by the different inmates and displayed a poster on its wall with the script: "Font¹⁸ Free Area". Further, prison staff had covered the whole admission unit with offensive graffiti directed against the prison management (see paragraph 77).

¹⁷ Most likely either the *rectus femoris* (part of the quadriceps muscle) or *sartorius*.

¹⁸ Font was the name of the Director of Brians 1 Prison at the time of the CPT's visit.

40. The CPT has serious concerns about the gravity of its findings, which suggests a pattern of physical ill-treatment inflicted by prison officers as a disproportionate and punitive reaction to the recalcitrant behaviour of inmates and in connection with their transfer to the DERT at Brians 1, Mas d'Enric and Ponent Prisons.

The CPT recommends that the Catalan regional authorities once again reiterate to custodial staff the clear message that physical ill-treatment, excessive use of force and verbal abuse of inmates are not acceptable and will be dealt with accordingly. The management in each prison should demonstrate increased vigilance in this area, by ensuring the regular presence of prison managers in the detention areas, their direct contact with prisoners, the investigation of complaints made by prisoners, and improved prison staff training. Further, the Committee would like to receive information on any action taken by the relevant judicial authorities in relation to the cases described under points ii) and iii) in paragraph 37 and point ii) in paragraph 38.

41. As mentioned in paragraph 7 above, at the end of its visit the CPT's delegation invoked Article 8, paragraph 5, of the European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and requested the DGSP to carry out an external review of the treatment of prisoners deemed to be challenging or recalcitrant and transferred to closed regime departments. By letter received on 12 November the DGSP informed the Committee that its Inspectorate Service had been instructed to carry out an investigation of the operation of Brians 1 Prison and in particular of the DERT in order to detect any malpractice by prison staff. **The CPT would like to receive information on the outcome of the above-mentioned investigation.**

42. The CPT has noted the intention of the Catalan regional authorities to consider providing specific training to staff, including those in intervention groups (*Escamots d'intervenció*) on handling high-risk situations. Such training to upgrade the skills of prison staff in handling high-risk situations without using unnecessary force, resorting to alternative means of averting crises and defusing tension, as well as in the use of safe methods of control and restraint, is to be welcomed. Nevertheless, prison staff should be placed under closer supervision by the management and should be held fully accountable for their actions. Further, in order to increase the accountability of members of intervention groups in crisis situations, all such interventions should be systematically video-recorded by a dedicated staff member and the video footage concerned should be stored safely and transmitted to the Inspectorate of the DGSP.

The CPT recommends that the Catalan regional authorities effectively pursue their efforts to upgrade the skills of prison staff in handling high-risk situations through appropriate training and to ensure that they are held accountable for their actions. The Inspectorate of the DGSP also plays an important role in this process and must ensure that its investigations are fully effective (see paragraph 45). Further, all operations of intervention groups (*Escamots d'intervenció*) within a prison establishment should be systematically video-recorded by a dedicated member of staff.

43. In the CPT's view, the contribution that prison health care services can make to the prevention of ill-treatment of prisoners, through the systematic recording of injuries and, when appropriate, the reporting of information to the relevant judicial authorities, cannot be overemphasised. At the outset of the visit, the CPT's delegation was informed about Instruction 02/2018 of the DGSP regarding the system of recording and reporting of injuries on inmates; namely that injury reports be drawn up in four copies to be forwarded to the prison director, judge (*Juzgado de Guardia*), the inmate in question and his/her personal electronic medical file. Further, the provisions of Article 262 of the CCP oblige a doctor to report to the competent judicial authority any information on a criminal offence they learn about in the exercise of their profession.¹⁹ Instruction 02/2018 has been in force since June 2018 and at all the prison establishments visited injury reports were being diligently shared with the relevant *Juzgado de Guardia*. In particular, most of the recent cases of alleged ill-treatment described above in paragraphs 37 and 38 had been reported by the management of the relevant prison establishment to the competent judicial authorities in accordance with the provisions of Instruction 02/2018. That said, the reports did not provide a full description of the injuries sustained nor of their compatibility with the allegation made by the inmate of how the injuries had been sustained. Yet, the operational manual for the implementation of Instruction 02/2018 specifically insists on such a compatibility assessment as well as on the necessity to describe all observed injuries in full. Further, there was no possibility for prison doctors to include photographic evidence of the injuries.

The CPT recalls that prison health care services can make a significant contribution to the prevention of ill-treatment of detained persons, through the systematic recording of injuries and, when appropriate, the provision of information to the relevant authorities. The CPT recommends once again that the Catalan regional authorities ensure that all prison health care personnel are aware of their obligation to record and report allegations of ill-treatment they receive to the competent authorities. Further, the Committee reiterates that the record drawn up after the medical screening should contain:

- i) an account of statements made by the person which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment);**
- ii) a full account of objective medical findings based on a thorough examination, and;**
- iii) the health care professional's observations in the light of i) and ii), indicating the consistency between any allegations made and the objective medical findings.**

The record should also contain the results of additional examinations carried out, detailed conclusions of specialised consultations and a description of treatment given for injuries and of any further procedures performed.

Recording of the medical examination in cases of traumatic injuries should be made on a special form provided for this purpose, with body charts for marking traumatic injuries that will be kept in the medical file of the prisoner. Further, it would be desirable for photographs to be taken of the injuries, and the photographs should also be placed in the medical file. In addition, a special trauma register should be kept in which all types of injury observed should be recorded.

¹⁹ The failure to comply with the obligation to report might be sanctioned with a prison sentence of six months to two years of detention in accordance with Article 408 of the Criminal Code.

Further, the Committee recommends that procedures be in place to ensure that whenever injuries are recorded which are consistent with allegations of ill-treatment made by the prisoner concerned (or which, even in the absence of an allegation, are clearly indicative of ill-treatment), the record is systematically brought to the attention of the competent judicial authorities, regardless of the wishes of the person concerned. Health-care staff must advise detained persons of the existence of the reporting obligation and that the forwarding of the report to the competent prosecutor is not a substitute for the lodging of a complaint in a proper form. The results of the examination should also be made available to the prisoner concerned and his or her lawyer. Health care professionals (and the inmates concerned) should not be exposed to any form of undue pressure or reprisals from management staff when they fulfil that duty.

44. As regards the investigation of allegations of ill-treatment by prison officers, the CPT's delegation received information at the outset of the visit that since 2014 the Inspectorate of the DGSP had investigated a total of 131 cases of alleged ill-treatment of inmates by prison staff. In only five cases did the Inspectorate recommend the initiation of disciplinary proceedings; in respect of a further 31 cases the Inspectorate had instituted a confidential file but had decided not to initiate disciplinary proceedings. **The CPT would like to be informed whether any additional steps were taken with regard to these 31 cases.**

45. In the course of its visit, the CPT's delegation had the opportunity to examine part of the investigative files provided to it by the management of Brians 1 and Mas d'Enric Prisons concerning eight cases of alleged physical ill-treatment of inmates since 2017 where the Inspectorate had requested that the prison management clarify the circumstances of the allegations. The requests of the Inspectorate to the prison management originated from complaints filed by inmates to an NGO or to the Catalan Ombudsman.

An analysis of the documentation showed that the files provided by the prison management of Brians 1 and Mas d'Enric Prisons to the Inspectorate included the written statements of the relevant parties and witnesses to the event, the CCTV recording of the incident and a copy of the medical examination conducted by the prison doctor. However, the files consulted by the delegation showed that the Inspectorate was not always applying the necessary criteria of thoroughness in trying to establish the facts in the light of the inmates' allegations. For example, in relation to a case of alleged physical ill-treatment of an inmate at the time of his immobilisation in a cell (not covered by CCTV) at the DERT module of Mas d'Enric Prison on 18 April 2018, the Inspectorate rejected the inmate's allegations in the light of the *"credible and concordant statements provided by prison staff even in the absence of CCTV recording"*. The Inspectorate also failed to address the origin of the various injuries which the inmate displayed and which were recorded by the prison doctor at the time of the inmate's mechanical fixation.²⁰

²⁰ The visiting prison doctor at the time of the commencement of the measure of mechanical fixation of the inmate recorded the following injuries: *"two abrasions on the anterior surface of the right tibia measuring 0.5 cm in diameter that did not affect the subcutaneous cell or show active bleeding"*.

Further, in two cases the description of the injuries observed by the prison doctor on the inmates did not contain an assessment of their compatibility with the allegations made by the inmates and so the cases were dismissed. In a third case, the contradictory statements of the inmate and prison officers were resolved in favour of the prison officers due to the inmate's alleged and unsubstantiated "*lack of credibility*". In another case, the prison management concluded that the ill-treatment alleged to have occurred in a cell (not covered by CCTV) could not have taken place as the inmate in question was later observed on the CCTV recording walking without any impediment. Finally, in respect of a case of alleged ill-treatment of an inmate during the application of a measure of mechanical fixation, the prison management at Mas d'Enric Prison could not provide the requested CCTV recording of the restraint measure to the DGSP Inspectorate as allegedly it could not retrace the relevant file in the system less than one month after the alleged incident. Such an explanation is at odds with the assertion by the Prison Director of Mas d'Enric Prison to the CPT's delegation that CCTV recordings of fixation measures of inmates in the DERT were kept for six months. Moreover, in none of the cases examined did the Inspectorate actively interview or take statements from the inmates who were making the allegations.

The CPT would like to be informed whether any of the above-mentioned eight cases resulted in the opening of disciplinary proceedings or a criminal investigation. Further, it trusts that the Catalan regional authorities will ensure that steps are taken to ensure that all future allegations of alleged physical ill-treatment of inmates by prison staff are investigated effectively,²¹ in the light of the above remarks.

46. Episodes of inter-prisoner violence were recurrent at some of the establishments visited in particular at the ordinary regimes of Modules 1 and 3, of Brians 1 Prison, Modules 3, 6 and 7 of Mas d'Enric Prison and Modules 3, 4 and 6 of Ponent Prison. In general, it appeared that prison staff intervened relatively promptly when such incidents occurred. Further, such incidents were regularly being reported to the judicial authorities whenever injuries were observed in compliance with the provision of Instruction 02/2018. **The CPT would like to receive information on the outcome of the investigations carried out by the judicial authorities into the cases of inter-prisoner violence referred to them under the provisions of Instruction 02/2018 at Brians 1, Mas d'Enric and Ponent Prisons from June to September 2018. Further, it would be interested to receive further information about the longer-term strategy of the DGSP to address this problem.**

²¹ For an investigation to be effective it must satisfy the criteria of: independence; impartiality; promptness; adequacy; thoroughness; and have a degree of transparency (victim involvement). See section on [Combating Impunity](#) from the 14th General Report of the CPT - CPT/Inf(2004) 28-part, paragraphs 25 to 42.

b. means of restraint

47. At the time of the 2018 visit, Circular 02/2007 issued by the Director of the Catalan Prison Service on 18 October 2007 continued to provide the only applicable regulatory framework for the application of the measure of mechanical fixation of an inmate. In a nutshell, the measure must be ordered by the head of service, a medical member must attend the inmate within 30 minutes, after two hours and subsequently at four-hourly intervals. In its reports on the 2007 and 2011 visits, the CPT was critical of the circular in that it did not address all the concerns raised by the Committee, notably in respect of the reasons for resort to fixation, its duration and supervision.²² Nevertheless, the DGSP recently issued a special thematic guide on the application of this measure which should constitute the basis of the training of staff in executing a measure of fixation of an inmate.²³

Further, at the outset of the visit, the CPT's delegation was also informed that a new draft circular on mechanical fixation of inmates was being developed by the DGSP. The draft circular introduces novelties such as: the prison director (rather than the head of service) has to decide on the application of the measure; clear verbal and non-verbal communication patterns should be used with the inmate at all times; the draft sets down more stringent intervals for security and medical supervision of the measure and specifically provides for the provision of food to the inmate and the possibility of complying with his/her physiological needs; it also establishes a multidisciplinary debriefing procedure after the cessation of the measure. These measures represent an improvement but they do not fully address the longstanding concerns referred to above, notably in respect of the reasons for resort to fixation, its duration and supervision.

It is also noteworthy that, by letter received on 12 November 2018, the DGSP informed the Committee of its intention to reduce progressively the resort to such a measure and that it had requested the management of every prison establishment to provide the Inspectorate with an analysis of every single incident report in order to adopt the necessary corrective measures.

48. In the course of the 2018 ad hoc visit, the CPT was able to observe that there had been a slight decrease in the number of times inmates had been subjected to mechanical fixation. More markedly, it noted that the average duration of the measure had declined significantly. For example, in the first nine months of 2018 the measure was resorted to on 219 occasions while during the whole of 2010 there had been a total of 384 instances of mechanical fixation in the Catalan prison system and, moreover, it was now rare for the measure to be continued throughout the night.²⁴

That said, the Committee continues to have concerns in relation to the reasons for the fixation measure, the methods employed which may cause serious injuries to inmates, the role of doctors in vetting the measure and their endorsement of the same in cases where clear contra-indications existed and systematic non-compliance with existing safeguards in the application of the measure. Further, the administration of medication by intra-muscular injection without any attempt to seek the consent of the prisoner or to explain the purpose of the medication remains extremely worrying.

²² See CPT/Inf (2011) 11, paragraphs 88 to 91 and CPT/Inf (2013) 6, paragraphs 124 to 129.

²³ The guide hinges on issues such as verbal communication and de-escalation measures and stresses the exceptionality and residual aspect of the fixation measure.

²⁴ Only 19 out of 219 mechanical fixation measures executed in the first nine months of 2018 had lasted more than 12 hours.

49. The cases below represent a sample of the inmates met by the CPT's delegation who had been recorded as having been subjected to means of restraint for prolonged periods in the months prior to the CPT's visit. In some of those cases, the inmates concerned were found to display injuries that could be consistent with their allegations. For example:

- i) An inmate [F] met by the CPT's delegation at Brians 1 Prison alleged that on 11 April 2018 while preparing to be released from prison (at the end of a previous sentence), he had made a derogatory comment about a prison officer and started a verbal altercation with the same staff member. He became agitated and this led to his handcuffing and immediate transfer to the DERT by a group of prison officers, where he was mechanically fixated to a bed face-down for a period of one hour, after which he was untied and released from prison. Although a report had been made on his fixation, his presence in the DERT module had not been recorded by prison officers in the relevant logbook examined by the CPT's delegation. The inmate also alleged that after his recent readmission to Brians 1 Prison, he had received persistent verbal threats from a prison officer involved in the April 2018 incident.
- ii) An inmate [G] met at Mas d'Enric Prison with a known history of shoulder surgery was fixated to a bed in the DERT module for three hours on 13 August 2018, after a physical altercation with a prison guard. At the time of his examination by one of the delegation's doctors, the inmate complained about the pain in his shoulder having been exacerbated by the raising of his elbows up his back while being escorted by staff to the fixation cell. The relevant incident report examined by the delegation confirmed that a doctor had visited him shortly after the measure of fixation: no mention was logged that he checked the state of his joints; the doctor did not find any contra-indications for the measure's continuance. Upon examination by the CPT doctor, the inmate displayed signs of significant shoulder injury: a large mature scar running over the front of the right shoulder, crepitus (creaking) over the joint, a reduced joint abduction limited to 90 degrees due to pain in the supraspinatus region; pain, reduced internal rotation of the joint limited to 45 degrees due to pain, obvious distress and joint subluxation (partial dislocation) during abduction, extension and internal rotation.
- iii) An inmate [H] met at Mas d'Enric Prison stated that on 9 September 2018 when he was placed in temporary isolation in an observation cell, he had deliberately broken the cell lamp. Immediately, a group of prison officers entered the cell, cuffed him behind his back tightly and took him to the immobilisation cell where he was fixated to a bed face-down in the so-called "spread-eagle position". He alleged that while fixated a prison officer had placed his thumb on the nape of his neck and pressed down as hard as he could. The medical report drawn up by the prison doctor at the commencement of the fixation measure indicated that the inmate was "*calm and co-operative*" and that there was no contra-indication for the execution and continuation of the measure. When examined by one of the delegation's doctors on 10 September 2018 the inmate in question presented the following neck injuries: tender yellow bruises, one on the left side of the nape of the neck, (2 cm x 1.5 cm) and the other over the third cervical vertebra (1 cm x 1.5 cm); he also had multiple abrasions around both wrists and ankles and two approximately parallel linear point abrasions running across the left mid-portion of his back (6 cm and 7.5 cm).

50. At Mas d'Enric Prison the examination of CCTV footage of an incident on 8 July 2018 in the DERT raises concerns about the effectiveness of the way in which prison staff applied control and restraint measures. The footage showed that ten staff members entered an inmate's cell after he had broken the in-cell camera,²⁵ that he was subsequently taken out of the cell restrained by three officers, that a scuffle broke out in the corridor and nine officers piled on the top of the inmate and a tenth one handcuffed him. He was then taken to an immobilisation cell where four prison officers grappled with his limbs in an un co-ordinated fashion for 12 minutes before they could attach him properly with straps on each fixation point (the straps were subsequently assessed as being too tight by the prison doctor and consequently loosened).

Such a *modus operandi* demonstrates clearly the need for further training for staff working in DERT modules in safe and effective control and restraint techniques (see also paragraph 42).

51. Most of the inmates who had recently been subject to mechanical fixation and interviewed by the CPT's delegation said that they had been chemically restrained soon afterwards by a member of the health care staff attending the fixation cell.²⁶ Indeed, this was the standard operating practice. A doctor working at Brians 1 Prison told one of the delegation's doctors that he considered forced injection to be beneficial for the fixated inmate and in compliance with the law as "*this was also being performed in the civil community at large*". The same doctor also indicated that it would not be his usual practice to monitor the vital signs of a prone-fixated prisoner whom he had just injected with a strong benzodiazepine.

The CPT reiterates its recommendation that the practice of forced medication of prisoners subject to fixation for security reasons be ended immediately.

Only in those extremely rare cases where the health of the prisoner concerned is at serious risk should medication without the person's consent be administered and then only in a medical setting (i.e. in the infirmary of the relevant prison establishment). In such cases, the measure must form part of a comprehensive, carefully developed, policy on restraint, incorporating the necessary safeguards. The prisoner must, in all circumstances, be informed of the purpose and effects of the medication.

52. Moreover, the supervision of fixated prisoners remained inadequate. It consisted of a prison officer checking on the prisoner every hour or two, either visually through the door or via CCTV.

As regards medical supervision, the same concerns expressed during the 2007 and 2011 visits remain valid. Both records and interviews with inmates indicated that a member of the health care staff would normally arrive soon after the fixation measure had begun and that they would usually perform a visual check of the inmate and monitor his/her vital signs. Occasionally, the same member of the health care staff would recommend the untying of one arm to enable the inmate to eat or urinate. One prison doctor interviewed by the delegation admitted that she was not comfortable with the role of vetting the application of the measure in a non-medical setting but said that the prison officers would regularly say that "*security has primacy over medical matters in a DERT*" and so, over time, she became accustomed to such a *modus operandi*.

²⁵ The inmate was under provisional isolation at the time of the incident in a dedicated cell covered by CCTV.

²⁶ In general, inmates would receive an injection of diazepam if they were slightly agitated or of clonazepam if they had been self-harming, were intoxicated or had more significant psychomotor agitation.

It should also be noted that neither the director of the prison nor the supervisory judge play an active role in supervising a measure of fixation (see also paragraph 84). In many instances, the supervisory judge was only informed about the measure after it had been terminated or several days later. No follow up was taken by either the director or the judge to determine whether the measure was necessary, proportionate or respected the inmate's dignity.

53. The CPT recognises that in every prison system there are certain inmates who pose a serious danger to themselves and/or to others and in respect of whom it is necessary exceptionally to resort to means of restraint in a prison setting. However, in its recent report on the 2016 periodic visit to Spain,²⁷ the CPT called upon the Spanish authorities to end the current practice of resort to mechanical fixation of inmates in all prison establishments, given that its previous recommendations to strengthen safeguards surrounding this measure had not been implemented.

The CPT takes note that, in the Catalan context, the competent authorities have recognised the need to adopt stricter rules and minimum standards to govern the measure of mechanical fixation of inmates in prisons.

That said, the findings from the 2018 visit indicate that the resort to mechanical fixation in the prisons visited still retains clear punitive elements and that the measure still does not comply with the relevant legal provisions. In other words, it is not in conformity with the principles of legality, subsidiarity and proportionality set out in Article 72 of the Prison Regulation. Many allegations were received that the application of the measure had been accompanied by the infliction of physical ill-treatment of inmates while they were fixated and/or the denial by staff to allow them to urinate (or even defecate) with dignity. Further, the measure is often applied to inmates who are suffering from a serious mental illness or a clear somatic impediment. Finally, the fixation remains inadequately supervised by security and health care staff and no debriefing is carried out after the termination of the measure.

The CPT remains of the view that an agitated inmate who poses a serious danger to him/herself or to others could be temporarily placed in a calming down cell (i.e. under Article 72 of the Prison Regulation) as a last resort when all other reasonable options (such as talking to the inmate in question) have failed. Further, the inmate concerned should be given the opportunity to discuss his/her experience, during and, in any event, as soon as possible after the end of a period of provisional isolation. This discussion should always involve a member of the health care staff or another senior member of staff with appropriate training.

54. The CPT reiterates its recommendation that the Spanish and Catalan regional authorities end the practice of mechanical fixation of inmates for security reasons. Such a measure may only be undertaken for medical reasons and in a medical setting (see also paragraph 71).

Pending the full implementation of this recommendation, the CPT notes that the Catalan regional authorities have committed to progressively reduce the need to resort to this measure, in strict compliance with the principles of legality, subsidiarity and proportionality set out in Article 72 of the Prison Regulation. In this regard, **the CPT recommends that certain safeguards surrounding the current application of the measure be strengthened, such as limiting its duration to minutes, with a view to accelerating progress towards the complete abolition of this practice.**

In particular, immediate steps should be taken by the Catalan regional authorities to:

²⁷ See in particular paragraph 76 of the report on the CPT's 2016 visit to Spain CPT/Inf (2017) 11.

- **introduce stricter criteria for the resort to the measure;**
- **limit its duration to minutes rather than hours and immediately stop the measure when the inmate shows signs of calmness;**
- **inmates should never be fixated in the prone position (i.e. face down);**
- **ensure that the position in which a person is fixated does not cause pain;**
- **ensure that a member of staff not only provides continuous and direct supervision of the inmate but engages with him/her verbally (as was the case in some of the cases examined in the course of the 2018 visit);**
- **put an end to the practice of forced medication of prisoners subject to mechanical fixation as recommended above;**
- **institute a proper debriefing of staff and more specifically of the inmate following each measure of fixation, and to feed back the outcomes into the management of the measure.**

The Committee would also like to receive information on the application of the measure of mechanical fixation for the months of January to June 2019, broken down by prison establishment, gender, duration, reason for applying the measure and whether the inmates in question had a mental illness and/or had recently self-harmed or attempted to commit suicide.

c. conditions of detention

i. *prisoners subject to closed regime and accommodated in DERTs*

55. The categories of inmates who can be placed in a DERT remain those undergoing a disciplinary sanction; those placed in provisional isolation (A/P) after an incident;²⁸ those awaiting a decision on a disciplinary sanction;²⁹ those on protection³⁰ and those who had been re-categorised to a 1st degree (i.e. those who were considered to be “dangerous” or “un-adapted to an ordinary prison regime” as defined by Article 10 of the General Organic Law on Prisons).

At the time of the 2018 visit, a total of 137 inmates (i.e. 2.4% of the overall prison population) were accommodated in one of the nine Catalan DERTs. The DGSP informed the CPT’s delegation that its overall short-term goal was to reduce the figure to below 2%.

56. Articles 93 and 94 of the 1996 Prison Regulations³¹ provide a general framework for the regime for prisoners placed in a DERT, notably the amount of time for outdoor exercise, association and programmed activities. For example, those prisoners classified under Article 93 enjoy a minimum of three hours of outdoor exercise in groups of no more than two inmates while prisoners under Article 94 enjoy a minimum of four hours of association every day in groups of five inmates. Both groups may have an additional three hours for scheduled activities.

²⁸ Pursuant to Article 72 of the Prison Regulations.

²⁹ See Article 243 of the Prison Regulations.

³⁰ See Article 75 of the Prison Regulations.

³¹ Article 93 is reserved for prisoners who are considered “dangerous” (for example, those who have attacked prison officers or been involved in inciting a mutiny among other inmates or in the light of the criminal profile). Every three months, an evaluation is carried out by the DERT team to consider progressing the inmate to a regime under Article 94 of the Penitentiary Regulation. The regime provided for by Article 94 should apply to those inmates who have been considered as un-adapted to ordinary and open regimes by the *Junta de Tratamiento*. The regime under Article 94 is structured upon one initial adaptation phase of 15 days and two additional phases of 45 days each which should promote the progress towards reintegration into an ordinary regime.

Following a thematic debate in 2016 in the Parliament of Catalonia following several critical reports on the DERTs and the impoverished regimes applied in them, a working group was established within the Department of Justice in order to elaborate a reform of the closed regime. The result was Circular 02/2017, issued in November 2017 by the DGSP, which introduced new elements to adapt the regime to a more individualised approach and to reinforce the safeguards surrounding placement. The main elements introduced by Circular 02/2017 are:

- the regime under Article 93 should be imposed only under exceptional circumstances and should consist of a minimum of six hours of out-of-cell activities on weekdays. Every inmate should be assigned a tutor (i.e. psychologist) who will hold individual interviews on a weekly basis. The regime should be subject to a review every 45 days;
- the regime under Article 94 remains structured in three phases (i.e. initial phase, phase 1, phase 2) and should consist of a minimum of six to eight hours of out-of-cell activities per day (depending on the phase), as well as the entitlement of between one and five telephone calls per week. The regime in question should be reviewed every 45 days;
- the health care team and in particular psychiatrists should assess more carefully the mental health status of each inmate placed in the DERT;
- a dedicated multidisciplinary team composed of educators, psychologists and social workers should develop more detailed individual treatment plans (PITs) for each inmate and should increase their direct interaction with them through motivational interviews;
- the range of educational, recreational, sport and workshop activities should be increased and particular attention should be devoted to vulnerable groups such as women and young adults.

57. As regards material conditions, the purpose-built DERT module of Mas d'Enric Prison consisted of three parallel galleries of 12 individual cells each and was accommodating 19 inmates at the time of the visit.³² Cells were spacious (measuring some 10m²) and contained in-cell sanitation, a bed and table attached to the floor, a shelving unit, chair, interphone system and a call-bell. The DERT module also possessed three spacious courtyards (none of which was equipped with a means of rest), an association room equipped with a table tennis, a library, a gym, a medical consultation room, a shop, a room for group activities and a visiting facility. The overall conditions of detention were good in terms of state of repair and hygiene, both in the cells and in the common areas. The visiting room should be brightened up and made more child-friendly and the courtyard would benefit from decoration to render it less austere.

The DERT at Brians 1 Prison consisted of 32 single-occupancy cells (three cells were used for solitary confinement and two for the measure of fixation) and accommodated 20 inmates at the time of the visit.³³ The cells measured approximately 10m² including a semi-partitioned sanitary annexe, a bed and table fixed to the floor a shelving unit and a chair. The DERT also contained an association room and a classroom, three outdoor exercise yards with no means of rest and a gym and offices for interviews and medical consultations. The cells were clean and in an adequate state of repair, access to natural light was sufficient as was the artificial lighting and ventilation.

³² I.e. five inmates under Article 93, seven under Article 94 and seven awaiting a decision on a disciplinary sanction (i.e. under Article 243 of the Prison Regulations).

³³ Eight inmates under the regime provided for by Article 93 of the Prison Regulations, seven under Article 94, four on provisional isolation and serving or awaiting a disciplinary sanction.

The purpose-built DERT at Ponent Prison consisted of 96 cells distributed in two modules of three floors and accommodated 47 inmates at the time of the visit.³⁴ The unit possessed five courtyards equipped with some sort of sports equipment (e.g. goal posts and exercise bars), two offices for individual interviews, two medical rooms, two rooms for group activities, a library, a gym, a shop, and five shower rooms.

The CPT recommends that all the courtyards in the DERTs visited be equipped with a means of rest. Further, efforts should be made to render the courtyards used by prisoners under Articles 93 and 94 less austere.

Further, the visiting facility of the DERT module of Mas d'Enric Prison should also be adequately decorated and be made more child-friendly (including games etc.).

58. In terms of staffing, the CPT's delegation noted that every DERT now possessed a multidisciplinary team (composed of a full-time co-ordinator, full-time psychologist and part-time educators, lawyers, teachers and social welfare officers). The team was tasked to organise activities and to ensure that every inmate placed in a DERT possessed a detailed individual treatment plan and risk assessment outlining the objectives and goals to be attained during each phase of his/her placement in the DERT. In principle, every inmate was offered regular meetings with the co-ordinator and the psychologist and with a lawyer and social welfare officer on an ad hoc basis. The individual interviews were meant to assist inmates in the fulfilment of the goals outlined in his/her respective individual treatment plan. This was confirmed both by the interviews and records observed by the delegation.

59. As to the level of out-of-cell activities on offer, the CPT's delegation found that the main provisions of Circular 02/2017 were still not fully implemented in those DERTs visited. Efforts had been made at Brians 1, Mas d'Enric and Ponent Prisons to create a weekly schedule of out-of-cell activities consisting of reading and art workshops, basic literacy classes, computer literacy courses, individual counselling on behavioural control, reduction of aggressiveness and conflict resolution. That said, these activities were still not held regularly and the offer of group activities at the time of the CPT's visit had drastically reduced since spring 2018 due to the extended summer recess. The presence of sports instructors in the DERTs remained irregular and the offer of sports activities insufficient. Further, inmates affected with a mental illness still did not receive the promised increased attention as provided for in Circular 02/2017.

The CPT recommends that the Catalan regional authorities take further steps to ensure that Circular 02/2017 is fully implemented. Emphasis should be placed on developing a purposeful regime for inmates placed in the DERTs with a view to promoting their reintegration into an ordinary regime module. The staff assigned to the DERT should in principle be affiliated to the module on a regular basis and be able to provide the maximum level of activities provided for in Circular 02/2017 throughout the whole year. Further, inmates affected by mental health disorders should either be placed in a medical setting or be provided with increased attention by specialised staff as provided for in the relevant provisions of Circular 02/2017.

³⁴ Four inmates under the regime provided for by Article 93, 23 under Article 94, two under Article 75 of the Prison Regulations, two on provisional isolation, 16 serving or awaiting a disciplinary sanction.

60. The provisions of Circular 02/2017 on the need to provide particular attention and tailored activities to vulnerable groups, such as young adults accommodated in a DERT, were still not implemented in practice. For example, a socially vulnerable young adult inmate of foreign nationality held under Article 94 (phase 2) of the Prison Regulations at the DERT Mas d'Enric Prison told the delegation that he had not benefited from any tailored activity for his particular profile in the course of his placement. His situation was aggravated by the fact that he did not have contact with his family and could not afford to purchase a television set.

The CPT recommends that the provisions of Circular 02/2017 on the need to provide an increased and tailored range of educational, recreational, sporting and workshop activities to young adults accommodated in a DERT module be immediately implemented at all DERTs in Catalonia that hold young adults. Further, particular attention should be provided to those inmates who are socially isolated and/or financially vulnerable.

61. The placement of inmates was periodically reviewed in accordance with the intervals set out in Circular 02/2017 (i.e. in principle every 45 days) and their respective progress was in principle evaluated by the multidisciplinary team in accordance with the objectives established in the PIT and the relevant individual risk assessment. In principle, the maximum period of accommodation in a DERT would amount to six months. That said, several inmates subject to the regime provided for under Article 94 of the Prison Regulations told the delegation that due to the drastic reduction of group activities since the spring of 2018, the only concrete difference between the phases of their reintegration into the ordinary regime consisted of an increased entitlement to make telephone calls every week.

The CPT recommends that the relevant provisions of Circular 02/2017 related to the progressive phases of reintegration of inmates into an ordinary module be diligently implemented in practice.

62. The Inspectorate Service of the DGSP has paid regular visits to all the DERTs of Catalonia since 2016 in order to assess *inter alia* the material conditions of detention, staffing, regime and security in those modules. The Inspectorate was basing its assessment, *inter alia*, on individual interviews with inmates and had developed a detailed matrix for the assessment of the implementation in practice of the new provisions of Circular 02/2017. This is positive. **The CPT would like to receive a copy of the assessment made by the Inspectorate of the DGSP on its most recent visits carried out to the DERT modules.**

ii. *prisoners subject to an ordinary regime*

63. The CPT's delegation also examined the conditions in several ordinary regime modules in each of the prisons visited. At the outset of the visit the CPT's delegation was informed of the recent introduction in the Catalan prison system of the Participation and Coexistence Model (MPIC) which is based on the experience of the so-called *modulos de respeto* in the rest of Spain.³⁵ **The CPT would like to receive information on the timeline and scope of the MPIC in terms of the number of prison establishments involved and the number of places for inmates.**

The material conditions in the ordinary modules visited were generally satisfactory. Cells (measuring approximately 10m² and accommodating one or two persons) were in general suitably equipped and in an acceptable state of repair and good hygienic conditions. All modules possessed a yard for outdoor activities, a medical room, a classroom, a shop, a canteen, communal toilets and workshops and were generally intended to function autonomously.

As to the regime, the vast majority of prisoners were classified as second degree and followed an "ordinary" regime. These prisoners spent most of the day (i.e. from 8 a.m. to 2.30 p.m. and from 4.30 p.m. to 9.00 p.m.) outside of their cells, either in the common areas of their respective modules or engaged in an organised activity. During the mornings, the cells are locked and prisoners are not allowed access to them and during the afternoon they may choose to remain locked in their cells. As the CPT has noted on previous occasions, the out-of-cell time offered to prisoners can be considered good practice.

The level of activities, including of a remunerated nature, was good at Brians 1 and Mas d'Enric Prisons where a large proportion of inmates were engaged in a working activity either in maintenance work (kitchen, laundry, general repair) or in one of the numerous existing production facilities (for the supply to external companies) located on each ordinary module. In addition, the offer of cultural, educational, vocational and recreational activities was good and varied. It is in particular positive and to be stressed that remand prisoners at Mas d'Enric and Brians 1 Prisons were in general offered the possibility to work shortly after their admission.

d. Health care services

64. As a consequence of the implementation of the Presidential Decree of the *Generalitat de Catalunya* 300/2006, the Health Department of the *Generalitat de Catalunya* has taken over the provision of health care for individuals deprived of their liberty through the *Institut Català de la Salut* (ICS) (Catalan Health Institute).³⁶ This has been implemented by means of setting up of a Primary Health Care Team (EAPP) in each prison establishment. The EAPPs possess a standardised structure which is fashioned in accordance with the technical criteria and requirements of the ICS health care units in the community at large.

³⁵ The *modulos de respeto* are separate units within prisons in which inmates commit to abide by a set of rules (in the sphere of personal hygiene, cell hygiene, and good inter-personal relations with staff and inmates, as well as participation in daily and weekly activities) in exchange for a degree of self-management with less staff supervision and the possibility of gaining easier access to permits and benefits.

³⁶ The ICS is the largest health care provider in Catalonia, since it manages 8 hospitals and over 280 Primary Care Teams. It counts upon almost 39,000 professionals and provides both specialised and primary health care to over 6 million citizens. The model that the ICS has implemented for Prison Health Care is the same as that of the rest of Primary Health Care.

65. The staffing levels of the EAPPs in the prison establishments visited were adequate. In particular:

At Brians 1 Prison (1,103 inmates) the EAPP consisted of 10 GPs (including one head and assistant head of the EAPP), 12 nurses and 15 auxiliary nurses. Further, a dentist was present for three hours per day as were five clinical psychologists. A team of specialists on traumatology, internal medicine, echography, gynaecology, dermatology, surgery, physiotherapy and radiology regularly attended the establishment on a weekly or bi-weekly basis.

At Mas d'Enric Prison (761 inmates), the EAPP consisted of 9 GPs (including one head and one assistant head of EAPP), 16 nurses and 8 auxiliary nurses. Further, a dentist was present in-house and a wide range of specialists regularly attended the prison establishment on a weekly or bi-weekly basis.

At Ponent Prison (629 inmates) the EAPP was composed of 8 GPs (including one head and one assistant head of the EAPP), 9 nurses (including one head nurse), 9 auxiliary nurses, one psychiatrist, one clinical psychologist and one dentist (three times a week). Further a wide range of specialists in traumatology, internal medicine, echography, gynaecology, dermatology, surgery, physiotherapy, radiology and urology visited the establishments between one and four times a month.

66. The level of standard equipment in the central infirmaries of the establishments visited was satisfactory and consisted in general of a defibrillator, an oxygen mask, an emergency kit, an echograph, a Fibroscan machine,³⁷ an analogue X-ray machine and, at Brians 1 Prison, also an echocardiographic machine. That said, the analogue X-ray machine in use at Ponent Prison was out-dated and malfunctioning and should be replaced. Further, the X-ray machine in use at Mas d'Enric Prison was not operational due to the absence of a trained technician. The medical rooms in each module offered adequate hygienic conditions and sufficient space for confidential medical examinations. That said, the medical room of the DERT module of Mas d'Enric Prison lacked a privacy screen and prison guards could easily observe medical examinations through the large glazed wall of the consultation room.

The CPT recommends that the EAPP of Ponent Prison be provided with a replacement X-ray machine. Further, as a matter of urgency, the glazed wall of the medical room of the DERT of Mas d'Enric Prison should be screened in order to preserve the confidentiality of the medical examinations of inmates. Further, a radiologist technician should be urgently recruited at the EAPP of Mas d'Enric Prison.

67. The management of personal medical files was well organised, complied with confidentiality requirements and was fully integrated into the community health care system of Catalonia. This is a positive example of effective provision of health-care to the inmate population, including the facilitation of through care after their release.

³⁷ In principle, a Fibroscan machine was available on a rotational basis at each prison establishment for a few days each month in order to monitor the state of patients affected by hepatitis.

68. As regards access to a doctor, the CPT's delegation received some complaints at all DERT modules of the establishments visited that requests for consultations with a doctor were sometimes delayed. This was in particular due to the fact that oral and written requests were administered by prison officers even when the prison doctor was physically present in the relevant infirmary of the DERT module and no alternative systems were in place (such as sealed envelopes, letter boxes or the possibility to address their requests to the nurse distributing the medicines).

The CPT recommends that steps be taken at all prisons to enable prisoners to contact the health care service on a confidential basis, for example, by means of a message in a sealed envelope and/or in dedicated boxes exclusively managed by health care staff.

69. The medical examination carried out upon admission of an inmate continued to be performed within 24 hours in all establishments visited and included a series of systematic biochemical tests with a particular focus on syphilis, HIV, hepatitis B (HBV) and hepatitis C (HCV). That said, the confidentiality of the examinations of inmates in the DERT modules was not respected and prison officers systematically remained present in the consultation room or within hearing distance.

The CPT recommends that all medical examinations of prisoners on admission take place out of the hearing and - unless the health care professional concerned explicitly requests otherwise in an individual case - out of the sight of prison officers.

As mentioned in paragraph 43 the Committee welcomes the adoption of Instruction 02/2018 on the transfer of communication on injuries observed on inmates and **refers to recommendations outlined in the above-mentioned paragraph 43 on how to ameliorate this system.**

70. The provision of psychiatric care at the prison establishments in Catalonia is regulated by a framework agreement concluded between the Justice and Health Departments of the *Generalitat* on 27 July 2017. The agreement in question stipulates a holistic and integrated approach in respect of the provision of mental health care in prisons with a specific focus on the amelioration of primary and hospital care to mentally ill prisoners. The agreement also provides for the possibility of the development of a specific protocol for the prevention and treatment of specific mental care problems such as the prevention of suicide, self-harm and drug addiction, with a specific focus on vulnerable groups (i.e. juveniles and female prisoners). Further, there is provision for responding to the specific training needs of members of EAPPs on mental health care challenges in prison, in order to assist them to detect early warning signs of a mental health care problem in inmates.

In the course of the 2018 visit, the CPT's delegation paid a targeted visit to the 67-bed Hospital Psychiatric Penitentiary Unit of Catalonia (UHPP) located within the perimeter of Brians 1 Prison. The UHPP is the main psychiatric unit within the Catalan penitentiary system and offers care to mentally ill prisoners from the entire system in four different wards (acute, sub-acute, rehabilitation and pre-trial) and it accommodated 51 mentally ill prisoners at the time of the visit.³⁸ The UHPP was visited in order to review the execution of the measure of mechanical fixation of inmates for medical purposes.

³⁸ Further, there is also a 80-bed Mental Health Unit at Brians 2 Prison and a 40-bed Mental Health Unit at Quatre Camins Prison.

In general, the CPT's delegation gained the impression that mentally ill prisoners in the prisons visited could fairly easily be transferred to the UHPP. That said, the delegation was able to observe that mentally ill prisoners accommodated at the infirmaries of Mas d'Enric and Ponent Prisons were not receiving any occupational therapy. Further, some of the inmates met by the CPT's delegation at the DERT modules of Brians 1, Mas D'Enric and Ponent Prisons displayed serious mental health disorders and problematic behaviour which could have been more effectively de-escalated in a more therapeutic setting through, for example, the intervention of adequately trained nurses.

The CPT recommends that the EAPPs of Mas d'Enric Prison and Ponent Prison take the necessary measures to put in place a full range of occupational therapy activities for mentally ill prisoners accommodated in their respective infirmaries. This also requires having adequately trained nurses.

71. Inmates may be fixated due to a medical condition to a bed in the infirmary of the respective prison establishments or at the UHPP of Brians 1 Prison. The procedure, regulated by a December 2015 Instruction of the ICS, provides that a member of the health care staff may order such a measure and shall assess the best position for fixation, which must be carried out using cloth straps. Further, according to the above-mentioned instruction, the measure is subject to periodic controls by a doctor (within the first two hours and subsequently every four hours) and by a nurse every two hours. The person subjected to the measure must be displaying a serious psychomotor agitation of a mental or organic origin or be in an agitated state which impedes any therapeutic intervention. The new draft Instruction on mechanical fixation provides that the Inspectorate be immediately informed of the start and cessation of every new restraint measure. Further, the measure should be under constant CCTV recording, registered in a dedicated log and a multidisciplinary team should assess *ex post* its implementation.

In the course of the first nine months of 2018 a total of 126 mechanical fixations for medical purposes were carried out in the Catalan Prison system (89 of them at the UHPP). The measure at the UHPP was executed in a single cell equipped with a metal bed fixed to the floor and under constant CCTV recording. Nurses and prison staff provided visual checks of the patients at regular intervals and all such actions were recorded in a dedicated logbook. Some of the inmates interviewed by the CPT's delegation said that they were released in order to comply with the needs of nature while fixated at the UHPP.

The CPT recommends that the Catalan regional authorities review the application of the measure of fixation in a medical setting in the light of the following remarks:

- **every patient who is subjected to mechanical restraint should be subjected to continuous supervision - a qualified member of staff should be permanently present in the room in order to maintain a therapeutic alliance with the patient and provide him/her with assistance. Clearly, video surveillance cannot replace continuous staff presence;**
- **the necessity to continue the measure should be reviewed by a doctor at short intervals;**
- **inmates should never be fixated in the prone position (i.e. face down);**
- **the duration of fixation should be for the shortest possible time (usually minutes rather than hours), and should always be terminated when the reason for the use of restraint has ceased;**
- **a specific register containing the attendance sheet of health care staff should be kept at the infirmaries where the measure of medical fixation of inmates is applied;**

- **once the means of restraint have been removed, it is essential that a debriefing of the patient take place, to explain the reasons for the restraint, reduce the psychological trauma of the experience and restore the doctor-patient relationship. This also provides an opportunity for the patient, together with staff, to find alternative means to maintain control over him/herself, thereby possibly preventing future incidents resulting in restraint.**

72. Concerning the treatment of inmates suffering from drug addiction, inmates were routinely questioned about substance use as part of the admission process. Analysis also confirmed that 6% of the prison population were in receipt of opioid substitution treatment (OST)³⁹ ensuring full conformity with treatment in the community with the possibility of starting OST during incarceration. Those inmates receiving OST were subject to intermittent drug testing and the confidentiality of the results was preserved. Needle and syringe exchange programmes existed at the establishments visited. Further, at Brians 1 and Ponent Prisons, nursing staff and NGOs were providing psychotherapy and socio-rehabilitation programmes for inmates suffering from drug addiction.

73. As to the prevention, detection and treatment of transmissible and infectious diseases, the Catalan regional authorities' approach within prisons remains at the forefront of good practice; inmates are systematically screened for HIV, TB, HBV and HCV upon admission and receive good treatment if needed. In particular, 6.2% of the prison's population was receiving anti-retroviral therapy for HIV. Further, 6% of the prison's population was on curative treatment for HCV⁴⁰ and encouraging figures were also provided to the CPT's delegation in relation to the high uptake rates for both HAV and HBV vaccination.

74. In terms of medical ethics, doctors at several prison establishments expressed their misgivings to the delegation about the fact that they were requested to issue fit-for-punishment certificates for prisoners who had to serve a disciplinary sanction of solitary confinement as well as a certificate of the absence of contra-indications for the application of mechanical fixation for security purposes.⁴¹ By letter received on 12 November 2018, the DGSP informed the Committee of its view that doctors are requested to issue certificates for the execution of disciplinary and security measures of inmates in the light of specific provisions of the Organic Law, the purpose of which is to provide additional safeguards for the physical and mental integrity of inmates.

The health care staff in any prison is potentially at risk of dual-loyalty conflicts. This risk is higher in those systems where health care staff work under the authority of the prison management. Their duty to care for their patients (sick prisoners) may often lead to conflict over considerations of the prison's management and security. This can give rise to difficult ethical questions and choices. Prison doctors act as a prisoner's personal doctor. Consequently, in the interests of safeguarding the doctor/patient relationship, they should not be asked to certify that a prisoner is fit to undergo punishment and/or may be safely subjected to mechanical fixation. This essentially non-medical task can affect the therapeutic relationship between health care staff and patients.

³⁹ The main OST in use was methadone but suboxone was also available.

⁴⁰ I.e. 36% on Mavirex (*glecaprevir & pibrentasvir*), 40% on Epclusa (*sofosbuvir & velpatasvir*), 4% on Zepatier (*lbasvir & grazoprevir*) and 20% on Harvoni (*ledipasvir & sofosbuvir*).

⁴¹ This consisted in practice of doctors ticking a box in a signed certificate stating that no contra-indications of a physical or psychiatric nature existed to the execution of the solitary confinement or the security measure of mechanical fixation of an inmate.

The CPT recommends that the Catalan regional authorities take immediate steps to bring existing practice into compliance with these principles and to promote their implementation in all prison establishments.⁴²

75. During and after the 2018 visit, the CPT's delegation was able to examine the autopsy reports of some of the inmates who had died in the prison establishments visited. The Committee observed that, in practice, the autopsy report of an inmate who had died in prison was only shared with the DGSP at the discretion of the relevant court on a case-by-case basis. The DGSP told the delegation that whenever they gained access to an autopsy report of an inmate from the competent court they would immediately communicate its content to the relevant prison management. That said, it remained unclear whether the EAPPs of the relevant prison establishment were systematically undertaking an analysis of each death in prison in order to consider what general lessons may be learned for the prison in which the death occurred and whether there were any systemic, nationwide measures that need to be taken to prevent future deaths.

The CPT recommends that a record of the clinical causes of patients' deaths be made and, if an autopsy is performed, its conclusions be systematically communicated to the relevant establishment by the competent judicial authorities. Further, the management of every prison establishment should undertake an analysis of each death in prison in order to consider what lessons may be learned for the prison establishment.

e. Other issues

i. *prison staff*

76. The number of custodial staff in the prison establishments visited appeared to be generally adequate. For example, at Brians 1 Prison, 377 custodial officers were responsible for the supervision of 1,103 inmates and at Mas d'Enric Prison, a staffing complement of 362 prison officers was tasked with the supervision of 761 inmates. That said, at Ponent Prison, 276 prison guards were supervising 629 inmates and it appeared that senior officers (*caps de unitat*) were not being replaced upon retirement. **The CPT would like to receive information from the DGSP on the staffing situation at Ponent Prison in particular with reference to the replacement of departing senior staff.**

77. As mentioned above, in the course of its visit to Brians 1 Prison the CPT's delegation noted that there was a campaign of intimidation directed against senior managers by some prison staff. This consisted of the display of graffiti and written death threats on the walls of the admission unit (see paragraph 39) and the long corridors connecting the detention modules, as well as the wearing of a protest symbol (a blue ribbon) on their uniforms. Attempts by the Director of the prison to use disciplinary processes to hold prison staff accountable for their actions appeared to have fuelled these grievances. In this context, it was with regret that the CPT learned that the Director of Brians 1 Prison had resigned from his position in December 2018.

⁴² See also Rule 46 of the UN Mandela Rules (the United Nations revised Standard Minimum Rules for the Treatment of Prisoners as adopted by the UN General Assembly on 17 December 2015).

The CPT would appreciate the comments of the Catalan regional authorities on this matter. Further, it trusts that the new senior management of Brians 1 Prison will pursue the reform process at the establishment. In addition, the DGSP needs to reflect seriously on how to provide additional support to prison managers who take resolute action to implement the Directorate's commitment to stamping out unacceptable behaviour by prison officers.

ii. discipline

78. An examination of disciplinary procedures in the prisons visited revealed that prisoners were in principle able to benefit from the formal safeguards set out by Articles 240-250 of the Prison Regulation (notably, the requirement that proceedings be served on prisoners in writing; the possibility to be assisted by a third party, including a lawyer; the possibility to present evidence and the requirement that a decision declaring evidence inadmissible be motivated; and the possibility to appeal). Further, the files of the relevant disciplinary proceedings of inmates appeared to be well recorded and documented at all prison establishments visited and ensured an accurate overview of the system in place.

79. The recourse of prison management to disciplinary sanctions at the prisons visited appeared to be high; for example, for the first nine months of 2018, 334 disciplinary sanctions involving solitary confinement of an inmate had been imposed at Brians 1 Prison (daily population, 1,103 inmates) and 237 at Ponent Prison (daily population, 629 inmates).

80. Pursuant to Article 236 of the Prison Regulation, a sanction of solitary confinement for a very serious infringement⁴³ may not exceed fourteen days for a single offence or forty-two days if imposed for concurrent disciplinary offences.⁴⁴

In practice, at Ponent Prison sequential periods (up to 14 days each) of solitary confinement of inmates had been imposed 154 times (out of a total of 237 sanctions of solitary confinement) on inmates for concurrent disciplinary offences in the first nine months of 2018, which were in general executed with an interval of a few days between the relevant periods. The CPT considers that for any single incident, even if it involves several violations of the prison rules, a prisoner should not be punished with more than 14 days of solitary confinement as a disciplinary sanction. Any offences committed by a prisoner which might call for more severe sanctions should be dealt with through the criminal justice system. By letter received on 12 November 2018, the DGSP informed the Committee of the plan to create a working group in the first quarter of 2019 in order to carry out, within the limited legislative competence of the *Generalitat*, a review of the criteria for the imposition of disciplinary sanctions. The aim of the review will be to ensure that punishment imposed more closely accords with the inmate's offence, with the view to reducing the imposition of sequential sanctions of 14 days of solitary confinement.

⁴³ Pursuant to Article 108 of the Prison Regulation, very serious infringements are, for example, mutiny, internal riots, physical aggression towards another person, active resistance to an order, and escape.

⁴⁴ The supervisory judge must approve any period of solitary confinement in excess of 14 days.

The CPT welcomes this initiative and would like to receive information on the activities of the above-mentioned working group as well as on the concrete action envisaged in order to address this problem. That said, the CPT considers that it would be preferable to lower the maximum period of solitary confinement permissible under national law to 14 days as a disciplinary punishment for a single incident.

81. In terms of the proportionality of the sanctions imposed, the CPT has some concerns over the apparently disproportionate approach to certain disciplinary offences which can lead to prisoners being severely sanctioned for relatively minor infractions. For example, it was not uncommon that inmates who indulged in ringing their in-cell call bells repeatedly, consequently annoying custodial staff, would have their offences classified as “very serious” and received up to 14 days of solitary confinement. Further, an examination of disciplinary files of inmates carried out by the delegation at Mas d’Enric Prison showed that an inmate who had burned the arm of his cell-mate on 15 July 2018 had received a sanction of two days of solitary confinement whereas another inmate who had insulted prison staff on 14 June 2018 had received a sanction of 12 days of solitary confinement with his offence classified by the treatment board as “very serious”.

The CPT recommends that all disciplinary punishments should be governed by the principle of proportionality and imposed in full compliance with the relevant formal procedures. The Committee invites the Catalan regional authorities to address the issue of the proportionality of disciplinary punishments in the context of the review of the imposition of disciplinary sanctions referred to in paragraph 80 above.

iii. contact with the outside world

82. The CPT's delegation found that the favourable situation of promoting contact with the outside world, observed during previous visits, persisted. Prisoners were entitled to two 20-minute visits per week, with a maximum of four visitors; the prison management could authorise the accumulation of these two weekly visits, which take place in closed visit booths.⁴⁵ Prisoners may receive two open visits per month, each one lasting between one and three hours, one of them may be an intimate (so-called *vis-à-vis*) visit and the other with close relations. Further, association visits, lasting a maximum of six hours, from the spouse or partner and children of up to ten years of age, may also be authorised on a quarterly basis for inmates who are not eligible for weekend leave.

In addition, prisoners are entitled to receive and send letters and to make five telephone calls of eight minutes each per week to a landline contact. That said, several foreign inmates complained to the delegation that they could not afford the costs of phone calls abroad. Further, several inmates expressed their dissatisfaction that they could not make telephone calls to a designated mobile phone number. **The recommendation set out in paragraph 112 below also applies in this context.**

iv. complaints and inspection procedures

83. Inmates in the Catalan prison system are entitled to file requests (*peticiones*) in relation to the application of one of their rights or benefits and to lodge complaints (*quejas*) and appeals (*recursos*) when they feel that their rights have been infringed by the prison administration. Several Articles of the Prison Regulation oblige the prison authorities to accept and process requests and complaints filed by inmates. Further, inmates can lodge second-instance complaints against the decision of the DGSP to the supervisory judge. Finally, inmates were also able to lodge complaints to the Catalan Ombudsman, as well as to NGOs in a confidential manner.

In the course of the 2018 visit, the CPT's delegation observed that requests and complaints were in general registered and processed in good time by the competent authorities. All prison establishments possessed a centralised register (including in electronic format) for the recording of requests and complaints and all entries were duly recorded.

84. As regards the role of supervisory judges in monitoring the implementation of custodial sentences and safeguarding prisoners' rights, as regulated by Article 76 of the General Organic Penitentiary Law, the CPT's delegation noted once again that judges were still not visiting prisoners in the accommodation units or the DERTs of the prisons visited. In general, supervisory judges were meeting inmates at their request in a designated office.

In terms of their control of the legality of the application of means of restraint and of the application of prolonged periods of solitary confinement, the CPT's delegation once again gained the impression that the role played by the supervisory judges remained merely one of certifying the decisions of the prison administration and there appeared to be no examination of the proportionality and appropriateness of the measures by the supervisory judges.

⁴⁵ Pursuant to Article 42, paragraph 3, of the Prison Regulation. Further, the prison director retains the right to restrict the number and duration of visits and telephone calls of inmates for security reasons. The restriction in question must be the object of a written, individual and reasoned decision which is subject to the scrutiny of the supervisory judge.

The CPT recommends that the Spanish authorities reiterate to supervisory judges the importance of their role as an impartial and independent control of prison practices. In particular, the Committee requests that the Spanish governmental authorities transmit this recommendation through the appropriate channels to the Inspection Services of the State Judicial Council (*Consejo General del Poder Judicial*).

v. *foreign prisoners*

85. The Catalan prison system is characterised by a higher proportion of foreign national inmates than in the rest of Spain (i.e. 44% of the overall prison population compared with 28% in the rest of Spain). In such a context, proactive measures need to be taken by the authorities to address the specific needs of foreign national prisoners, particularly to ensure that they do not suffer from discriminatory practices. More needs to be done, including attracting prison officers from different cultural and ethnic backgrounds to reflect the changing inmate population.⁴⁶

At the time of the 2018 visit, the CPT's delegation observed that foreign national prisoners were provided with information in different languages on the possibility offered by the Spanish legislation to convert a prison sentence to deportation. That said, information on the internal regulations of the prison establishment was provided only in the Spanish and Catalan languages, which presented linguistic challenges for a significant proportion of the prison population.

The CPT recommends that the informative brochure available at the prison establishments (i.e. *Normativa Básica para los Internos*) be translated into the main languages reflecting the needs of the foreign population accommodated in the Catalan prison establishments.

⁴⁶ See [Recommendation CM/Rec\(2012\)12 of the Committee of Ministers to Council of Europe member States concerning foreign prisoners](#).

3. Prison establishments for women

86. In many countries, prisons are largely designed by men for male prisoners and to be managed by male staff. Women prisoners are often treated like male prisoners with no specific rules and regulations addressing their particular needs as women. In fact, many prison systems and the conditions of detention they afford prisoners lack a gender focus, and prison policies and daily practices within prisons usually range from being gender-neutral to being gender-biased. In European countries, women make up a small minority of the overall prison population and the focus of prison systems is oriented toward the standard male prisoner (i.e. how to provide a safe and secure environment and, if feasible, to prepare them for reintegration into the community). However, women have particular biological and gender-specific needs and vulnerabilities that require an alternative prison policy oriented toward their requirements. The physical environment is an important aspect of this.

Further, women prisoners generally pose a lower security risk than male prisoners and therefore it is necessary for any gender-sensitive risk assessment and classification of prisoners to take this fact into account. Such a requirement is reflected in the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) of October 2010⁴⁷, and more particularly in Rule 41(a).⁴⁸

87. In Catalonia, women make up 7% (587 in September 2018) of the overall prison population. The main women's prison located in Barcelona is old and run down and was not designed to meet the specific needs of women prisoners; the four-storey building, dating from 1915, was originally a reformatory and only became a women's prison in 1983. Many women prisoners are furthermore dispersed in small dedicated detention units within male prison establishments throughout Catalonia. There is recognition by the authorities of the need to develop a gender-specific approach towards women prisoners. The *Conseller* of Justice informed the CPT's delegation of the importance she placed on developing a unique approach towards women prisoners to complement the work being done in the community. To this end, plans were apparently being drawn up to build a new women's prison in the Zona Franca area of Barcelona.

The CPT recommends that the Catalan regional authorities take active steps to develop a gender specific approach towards women prisoners. Further, this approach should take into account that women generally pose a lower security risk when developing any gender sensitive risk assessment and classification of prisoners.

The Committee would also like to receive detailed information on the proposal to build a new women's prison in Barcelona.

⁴⁷ Adopted by UN General Assembly resolution 2010/16, A/C.3/65/L.5, on 6 October 2010.

⁴⁸ Rule 41: The gender-sensitive risk assessment and classification of prisoners shall:

(a) Take into account the generally lower risk posed by women prisoners to others, as well as the particularly harmful effects that high-security measures and increased levels of isolation can have on women prisoners;

88. In the course of the 2018 visit, the CPT's delegation visited Barcelona Women's Prison (known as Wad-Ras) which, at the time of the visit, had a capacity of 165 beds in the ordinary regime section and was accommodating 143 women, of whom 70 were remand prisoners (97 prisoners were foreign nationals).⁴⁹ It also visited the ordinary and closed regime departments of the women's units of Brians 1 Prison, which were accommodating 149 prisoners, of whom 15 were on remand, and of Ponent Prison, which were accommodating 23 women for an official capacity of 50.

a. ill-treatment

89. The vast majority of women prisoners met stated that they were treated correctly by prison staff; this was notably the case at Wad-Ras Prison where no allegations of physical ill-treatment were received and a relatively relaxed atmosphere was in evidence. Further, women at Brians 1 Prison stated that the situation in the unit had improved since the appointment of the current sub-director in 2017 with particular responsibility for the women's unit.

Nevertheless, despite most allegations pre-dating the arrival of the sub-director, a few allegations of physical ill-treatment and excessive use of force, notably in the context of women prisoners being fixated and held in the DERT in the course of 2018, were received at Brians 1 Prison. The alleged ill-treatment consisted primarily of punches by officers wearing black gloves, pulling hair and inflicting blows with the knee. A couple of similar allegations were also received from women prisoners at Ponent Prison. Further, these alleged violent interventions occurred after the women prisoners had committed acts of self-harm or attempted to commit suicide.

For example, a female inmate from Brians I Prison alleged that her left leg was hit by custodial staff while she was being fixated to a bed in the female DERT on 15 August 2018, following an incident of inter-prisoner violence. When medically examined by one of the delegation's doctors on 7 September 2018, she displayed the following injuries: tender bruise on left thigh (1.6 cm diameter), irregularly shaped scar with scabbing around edges on the left knee (2 cm diameter), brown bruise on the left thigh (5.5 cm x 0.4 cm). Further, the inmate in question alleged that, on 7 September 2018, a prison officer violently grabbed her left arm as she was not moving fast enough in the lunch-time queue and the fresh bruise (0.9 cm x 0.9 cm x 0.4 cm) displayed on her arm was consistent with her allegation. The inmate had submitted a complaint to the supervisory judge regarding the 15 August allegation and her injuries had been recorded by the prison health care service.

90. The CPT recognises that controlling an aggressive or agitated prisoner may be challenging. However, all prison officers should be trained in the use of approved control and restraint techniques and, therefore, there can be no justification for an officer punching or pulling the hair of a female inmate in the course of restraining her.

The CPT also received allegations of verbal abuse by certain prison officers from several women in all three establishments visited.

The CPT recommends that the Catalan regional authorities reiterate to custodial staff the clear message that physical ill-treatment, excessive use of force and verbal abuse of inmates are not acceptable and will be dealt with accordingly.

⁴⁹ Barcelona Women's Prison also accommodates around 300 men and 140 women prisoners who are under an open regime (3rd degree).

In particular, the CPT recommends that appropriate measures be taken to upgrade the skills of prison staff in handling high-risk situations without using unnecessary force, in particular by providing training in ways of averting crises and defusing tension and in the use of safe methods of control and restraint. Further, prison staff should be placed under closer supervision by the management and receive special training in control and restraint techniques of inmates with suicidal and/or self-harming tendencies.

The CPT would also like to be informed about the outcome of the complaint submitted by the inmate in the case referred to above in paragraph 89.

91. The CPT's delegation was informed that health care professionals were being trained on the Istanbul Protocol and notably on how to improve the recording of injuries. This is to be welcomed as in the files examined the doctors were not recording in full the account of the prisoners on how the injuries were sustained nor detailing sufficiently the injuries. Further, many women prisoners stated that when they had sustained injuries they were always examined by a doctor in the presence of prison officers. In this context, **reference is made to the recommendation in paragraph 43 above concerning the recording of injuries.**

Further, the CPT reiterates its recommendation that steps be taken to ensure that all medical examinations are conducted out of the hearing and - unless the doctor concerned expressly requests otherwise in a given case - out of the sight of prison officers.

92. It is also noteworthy that nearly all the women who alleged ill-treatment, notably at Briens 1 Prison, stated that they had not made a complaint as they were afraid of reprisals. In light of the findings from the male prison and the campaign of intimidation against the director of this prison by certain prison officers (see paragraph 77 above), such fears cannot be taken lightly. Moreover, irrespective of whether that fear is founded or not, it demonstrates once again that prisoners do not have faith in the effective operation of the complaints system.

The CPT recommends that greater efforts be made to ensure that the complaints system operates efficiently and is viewed as being fair and impartial by prisoners. Particular emphasis should be placed on ensuring that any complaint alleging abuse by prison officers is reported to the appropriate authorities and effectively investigated. See also paragraph 84.

93. It was noted that there were some incidents of inter-prisoner violence in the three women's establishments visited but the vast majority were not of a severe nature and staff intervened promptly. Likewise, as regards bullying, staff appeared to be vigilant in preventing more vulnerable prisoners from being exploited.

94. As regards the use of means of restraint, the CPT's delegation met a number of women at Briens 1 and Ponent Prisons who had been fixated to a bed face down. The concerns raised above by the CPT regarding the measure of fixation apply equally to women prisoners. Many of the women met were clearly distressed by the whole experience of having been fixated and yet in none of the cases examined had there been a proper debriefing following the termination of the measure. Further, several of the women to whom the measure of fixation was applied had a serious mental health disorder. **Reference is made to the recommendation in paragraph 54 above.**

b. admission procedure

95. The admission procedure is generally well organised in Catalan prisons. In the establishments visited, all women received information on the running of the establishment both orally and in writing (see also the recommendation in paragraph 85 above).

New arrivals were usually seen by a nurse upon admission and thereafter by a doctor within 24 hours. It is well established that women prisoners have a higher prevalence than men of mental health illness, drug dependency and self-harm, and that many are victims of sexual and other gender-based violence. However, the rules regulating the admission process do not contain gender specific provisions for women, other than for pregnant women and mothers with babies (see Articles 29 and 38 of the Organic Law and Articles 178-181 of the Prison Regulations). **The Prison Regulations and admission process should be reviewed to ensure that they meet the general requirement laid down in the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) of October 2010, notably Rules 2(1) and 6(e).**⁵⁰

Such a review requires looking at their particular vulnerabilities at the time of admission. For example, at present there is no systematic screening for sexual abuse or other forms of gender-based violence inflicted prior to admission. Such screening is essential as violence experienced prior to admission is likely to have a direct correlation with the woman's behaviour and even offending behaviour, and should clearly impact on the way in which the care plan for the woman in question is drawn up for her stay in prison (i.e. whether she needs specialised psychological support or counselling). The lack of such an approach means that the management is unable to take appropriate steps to ensure that victims of sexual abuse are not re-traumatised in the course of their imprisonment.

The CPT's delegation found that at Brians 1 Prison, medical screening for sexual and gender based violence and reproductive health history was generally being carried out. A number of women stated that they had been asked about their history of sexual and gender-based violence and some courses on victims of violence were offered by non-governmental organisations (NGOs). However, several women stated that the screening had not resulted in any counselling nor had it been reflected in their individual treatment plan, and a few women said that no such screening had been carried out upon admission.

The CPT recommends that the Catalan regional authorities further develop the admission procedures at Wad-Ras, Brians 1, Ponent and other prisons accommodating female inmates to take into account the gender-specific needs of women prisoners. This should include screening for sexual abuse or other forms of gender-based violence inflicted prior to entry to prison and ensuring that such information is considered in the drawing up of a care plan for the woman in question. Further, steps should be taken to ensure that the admission procedure is always comprehensively carried out.

⁵⁰ Rule 2:1. Adequate attention shall be paid to the admission procedures for women and children, due to their particular vulnerability at this time. Newly arrived women prisoners shall be provided with facilities to contact their relatives; access to legal advice; information about prison rules and regulations, the prison regime and where to seek help when in need in a language that they understand; and, in the case of foreign nationals, access to consular representatives as well.

Rule 6. The health screening of women prisoners shall include comprehensive screening to determine primary healthcare needs, and also shall determine:

(e) Sexual abuse and other forms of violence that may have been suffered prior to admission.

96. The CPT found that the same concerns relating to the recording and reporting of injuries for women prisoners as for male prisoners. **The recommendation in paragraph 43 above applies to all women prisoners.**

c. conditions of detention

i. *prisoners subject to closed regime and accommodated in DERTs*

97. The rules governing the placement and stay of women prisoners in a DERT are the same as those for male prisoners (see paragraphs 55 and 56 above).

98. As regards the material conditions, the separate DERT in use for female prisoners at Brians I Prison was located on the third floor of the dedicated module for women and accommodated five women at the time of the visit. The module consisted of 15 cells each equipped with a bed and table fixed to the floor, a shelving unit and a chair. The DERT also included two cells for solitary confinement (one of which was monitored by CCTV and was used for fixation purposes), a drab enclosed courtyard, an association room equipped with an exercise bike and a dining room. The cells possessed a satisfactory level of hygiene and were in an adequate state of repair; and access to natural light was sufficient as was the artificial lighting. The CPT's delegation was informed about the plans to close down the unit on the 3rd floor and transfer it to the ground floor where there would be better access to activities. **The CPT would like to receive an update on these plans.**

At Ponent Prison, the DERT for women was located within Module 8 and consisted of three single occupancy cells, each measuring approximately 10m² and equipped with a bed, shelving unit, table and chair, and a fixation cell. There was also a courtyard, with a means of rest but no shelter from the rain or the sun, and an association room equipped with a TV. The module accommodated two female prisoners at the time of the visit. **A shelter against inclement weather should be installed in the courtyard. More generally, efforts should be made to render all courtyards in the DERTs for women prisoners less austere.**

99. As regards the regime, the specific provision of Circular 02/2017 on the need to provide particular attention and tailored activities to vulnerable groups such as female prisoners accommodated in a DERT was still not implemented in practice. For example, female inmates accommodated in the DERTs of Brians I and Ponent Prisons only benefited from the minimum provision of outdoor exercise entitlement foreseen by their regime (see paragraph 56) and they were not provided with any tailored activity to their specific profile.⁵¹ The Director of Brians I Prison told the delegation that he considered such a state of affairs as not acceptable which required a drastic change of approach.

The CPT recommends that the provisions of Circular 02/2017 on the need to provide increased and specifically tailored range of educational, recreational, sport and workshops activities to female prisoners accommodated in a DERT module be immediately implemented at all relevant DERTs of Catalonia.

⁵¹ The only tailored and female oriented out-of-cell activity on offer at the DERT module of Brians I Prison consisted of a weekly pottery workshop.

100. In respect of searches, the CPT's delegation noticed that all women prisoners within the DERT at Brians 1 were subjected to a pat-down every time they left their cell. Such a systematic approach is comprehensible for prisoners placed in the DERT under Article 93 and the initial phase of Article 94. However, as the inmates progress to Phase 1 and Phase 2 of Article 94, any pat-down search for a prisoner coming out of her cell should be based upon an individual risk assessment. In this respect, the generally lower security risk posed by women prisoners should be taken into account.⁵² **The CPT would appreciate the comments of the Catalan regional authorities on this matter.**

ii. prisoners subject to an ordinary regime

101. The L-shaped women's unit within Brians 1 Prison comprised three accommodation wings (one of which was closed at the time of the visit), a special department, workshops and classrooms, a dining area and a large outdoor exercise yard.

The material conditions of the unit were of an adequate standard; prisoners were accommodated in double-occupancy cells furnished with a bunk-bed, chair, cupboard, sink and fully partitioned toilet. Ventilation and access to natural light were good. All prisoners had access to two large courtyards and a living room. Vulnerable inmates (disabled, older, transsexual, convicted police officers) were placed in the admission area where staff could afford them increased care and protection.

The delegation was informed about plans to upgrade the women's unit through the renovation of level 0 (closed at the time of the visit) and the transformation of level 3 from the DERT into a vulnerable prisoners' unit. Nevertheless, the management recognised that the architecture, layout and conditions could not be considered optimal to address the needs of the women inmates. The delegation observed for itself the difficulties of accommodating women together without being able to differentiate them in a way similar to that in operation for male prisoners. Many women told the delegation that the lack of differentiation, resulting in all types of prisoner being mingled together regardless of their needs and the challenges they posed, contributed to a sense of insecurity and fear. The only option for differentiation when problems arose was transfer to the special department. Introducing an effective differentiation, with accommodation in separate wings and the availability of more exercise yards, would not only facilitate the lives of many female prisoners but should improve the ability for staff to manage and support prisoners throughout their prison sentences.

A similar state of affairs was observed at the women's unit at Ponent Prison, except that the unit was much smaller and the conditions more austere.

The CPT recommends that the Catalan regional authorities pursue the possibility of providing differentiated conditions for female prisoners. Further, it would like to be informed about the renovations and re-organisation of the women's unit at Brians 1 Prison.

⁵² See also Bangkok Rule 41 – op.cit footnote 48 above.

102. At Wad-Ras, the accommodation areas for women prisoners on the first (remand) and second (sentenced) floors were rather worn and run down as was the whole structure. Women were held in multiple-occupancy cells containing two to six beds, each of which was modestly furnished. The sanitary annexes in each cell were fully partitioned and the ventilation and access to natural light were good. There was a degree of overcrowding with many of the larger cells (measuring approximately 18m², excluding the sanitary annexe) accommodating five or six inmates when their capacity should be limited to four. Steps should be taken to ensure that the 4m² of living space per prisoner is respected throughout the establishment and the accommodation capacity revised accordingly.

The outdoor exercise yard was large and contained a marked sports area in the centre with benches around the sides and a covered area as well as a coffee bar with tables and chairs. The yard also contained a tree and some flower beds which rendered it more pleasant.

The CPT recommends that the inmate capacity at Wad-Ras be recalculated to ensure that all accommodation cells provide at least 4m² of living space per prisoner excluding the sanitary annexe and that the occupancy levels be reduced accordingly.

103. There was also a mother and baby unit at Wad-Ras on the ground floor which consisted of 11 rooms (six of which were for double-occupancy) and, at the time of the visit, was accommodating 12 mothers and their babies. The unit had a playroom, an association room, a kitchen/dining area, a workshop and a large playground. The unit was clean and had a respectful and caring atmosphere. The rooms within the unit were never locked.

Mothers could have their children live with them in prison up until the age of three years. From three months on, the child could be sent to a day nursery in the community (9h to 17h) to enable the mother to work and participate in various activities (sports, cooking, cleaning, hairstyling) and educational courses. Further, sentenced women in the ordinary regime (2nd degree) could apply and be appointed to work as remunerated baby-sitters to enable the mothers to associate with other prisoners or take part in activities. The director and staff working with the unit held an assembly with the mothers twice a month to discuss the running of the unit, which was highly appreciated by the mothers with whom the delegation spoke.

While certainly the material conditions of the unit should be upgraded, the support provided to the mothers and babies was excellent in terms of care and providing an environment for the infants that resembled as far as possible life in the community. One area for improvement could be providing mothers with better dietary information and cooking classes. Otherwise, **the unit could be considered an example of good practice.**

104. As regards the regime, it is positive that at Wad-Ras sentenced and remand prisoners were only locked in their cells at night from 21h30 to 07h30.⁵³ During the day, in addition to accessing the outdoor yard, a number of activities were on offer, notably, sports, library and school as well as certain courses such as drama, sewing, life skills, painting and drawing.

Further, around 100 women were working two to four hours a day within the prison (laundry, kitchen, transport and distribution of meals, cafeteria and various workshops) for which they received a monthly payment of between 60 and 120 Euros. A number of women had two jobs.

⁵³ Women placed on “basic” regime were also locked in their cells from 14h to 16h.

At Brians 1 Prison, prisoners were out of their cells for up to 8 hours a day and could engage in various workshops (arts and plastic) or paid work (serving food, laundry) or school (closed during the summer months). Nevertheless, more efforts need to be made to offer women a more diverse range of activities which are not gender-stereotyped. At the same time, offering activities in prison in which both men and women may participate together can be positive, provided those involve consent to such arrangements and the persons are carefully selected and adequately supervised. It was good to note that men and women prisoners at Brians 1 could take cardio courses such as Zumba together. Considerations should be given to expanding such joint activities. **The CPT recommends that the Catalan regional authorities continue to develop the range of non-gender-stereotyped purposeful activities available to female prisoners.**

105. The lack of screening for sexual abuse or other forms of gender-based violence upon admission, notably at Ponent and Wad-Ras Prisons, also meant that prisoners who had suffered from such violence (several of whom were interviewed by the delegation) and were in need of specialised psychological support or counselling⁵⁴ were not being offered it. At Brians 1 Prison, the management had initiated the possibility for female victims of violence to participate in a course offered by a NGO to address their victimisation. However, this was the only initiative the delegation came across. Moreover, the CPT considers that the prison authorities should be proactive in establishing accredited courses to address victimisation, empowerment and self-reliance rather than leaving the initiative of whether or not to run such courses to an NGO. Once established, it may be that a particular NGO is best qualified to lead the course but the scope and parameters of the training should be set by the state. Moreover, all women prisoners who have been subjected to sexual abuse or other forms of gender-based violence should be offered the possibility to attend such courses.

The CPT recommends that the Catalan regional authorities set up specialised psychological support or counselling programmes for women who are victims of rape, sexual abuse and other gender-based violence.

d. health care services

106. The medical services available to women prisoners at Wad-Ras Prison were of a good standard. Health care was free of charge and there were no restrictions on accessing it. Further, staffing levels could be considered very favourable with a chief doctor, three general practitioners, three nurses, two psychiatric trained nurses and an auxiliary nurse for a maximum of 165 ordinary regime prisoners and around 440 open regime male and female inmates.

As mentioned above in paragraph 94, the admission process needs to be supplemented by a screening for sexual abuse or other forms of gender-based violence inflicted prior into entry to prison and an improved recording of injuries sustained by women prior to entry into prison. On this latter point, the delegation was informed that increased reference and training on the Istanbul Protocol 2006 was being offered to health care staff in the prison.

More generally, women were offered breast and cervical cancer screening on a regular basis and could consult with a gynaecologist. They could also access contraception. Plans were apparently underway to put in place a more intensive programme for women's health. **The CPT would like to receive information on this programme.**

⁵⁴ See Rules 10.1 and 38 of the Bangkok Rules.

Other aspects of health care such as treating substance misuse and medication issues posed no problems and are addressed, together with the provision of health care services in Brians 1 and Ponent Prisons, in Section 2.d. above.

107. At Wad-Ras, women with a mental health disorder were accommodated in a so-called “polyvalent unit” which consisted of four single occupancy cells and a room for association and dining. The patients’ doors were open some 12 hours a day and they were allowed to participate in activities in the prison. However, at the time of the visit, the women present in the unit spent their days in the unit being guarded by prison officers who had no mental health training and who provided no caring activities for the women. One woman with a bipolar mood disorder required a therapeutic environment and the provision of occupational activities, and yet she spent her days alone. Indeed, following an incident of self-harming two months prior to the CPT’s visit she had been isolated in the unit which in essence was punishment for self-harming when what she required was appropriate support and interventions from staff.

The polyvalent unit at Wad-Ras is not an appropriate environment in which to place women who are suffering from a mental illness. Such women should be transferred to a psychiatric institution. If it is necessary to accommodate them in the prison for short periods, the polyvalent unit should be staffed by mental health care professionals who can provide support and occupational activities for the women.

The CPT recommends that the Catalan regional authorities take the necessary steps in light of the above remarks.

108. In the prisons visited, the management recognised that cutting and other forms of self-harm were prevalent among women inmates. However, many prison officers in these same prisons viewed the high prevalence of self-harming by women prisoners as merely an attempt to attract attention and considered that it ought to be dealt with severely to prevent future occurrences. For example, at Wad-Ras a prisoner placed in one of the basement cells upon admission to the establishment was warned by the head of service that if she self-harmed she would be fixated and transferred to Brians 1 Prison.

The Committee has already had occasion to emphasise the fact that acts of self-harm or even attempted suicide very often reflect psychological or psychiatric difficulties or situations which should be dealt with from a therapeutic angle, rather than punished. There is an urgent need for the prison authorities to put into practice a policy on preventing and reducing instances of self-harm. This requires first of all identifying those prisoners at risk, starting with the admission process, and thereafter managing those prisoners identified as presenting a risk. Such a policy should complement the gender-based screening on admission and inform the establishment of individual care plans which in turn should provide the women with appropriate support, health care and counselling.

The CPT recommends that the Catalan regional authorities adopt a policy on preventing and reducing instances of self-harm of women prisoners and institute it in all establishments and that women who do self-harm be afforded the necessary support by staff. Persons who self-harm or who are risk of self-harming should always be dealt with from a therapeutic standpoint and not a punitive one.

Moreover, in light of the prevalence of self-harming incidents by women prisoners, **staff working with women prisoners should be provided with specific training on identifying and interacting with women at risk of self-harming or attempting suicide,⁵⁵ with an emphasis on de-escalation and rapport-building rather than restraint and fixation.**

e. prison staff

109. In all the prisons visited there was mixed-sex staffing which, as a rule, the CPT supports as the presence of male and female staff can have a beneficial effect in terms of both the custodial ethos and in fostering a degree of normality in a place of detention. Nevertheless, it is essential that all custodial staff working in women's prisons or detention units receive gender-specific training.⁵⁶

The fact that many women prisoners have been subjected to sexual and gender-based violence and that, statistically, they have generally a higher prevalence than male prisoners of drug dependency, self-harm and mental illness, makes it essential that any gender-sensitive policy must include specialised training for staff. Male staff working with women prisoners need to understand how their actions may be perceived by a woman who has been the victim of sexual or gender-based violence.

Within prisons accommodating women, policies should be put in place to ensure that at least half of the custodial staff are women and efforts should be made to promote and encourage women custodial officers to assume management roles such as head of service or unit (*Caps de Servei, Caps d'Unitat*). At Wad-Ras, the CPT noted that only 5 of the 25 positions in these categories were held by women and that women custodial officers occupied 38 of the 97 allocated posts. Similar observations apply to the staff in place at the Brians 1 and Ponent units.

The CPT recommends that all custodial staff working with women prisoners receive gender-specific training. Further, greater efforts should be invested to increase the overall ratio of female prison officers to male prison officers working in women's prisons and detention units, and to increase the number of female prison officer managers (heads of unit and service).

f. Other issues

110. The disciplinary system described in Section 2.e.ii above applies equally to women prisoners.

At *Wad-Ras Prison*, the disciplinary procedures were respected and prisoners were offered an opportunity to comment on the proposed sanction being delivered to them, and the sanctions appeared proportionate.

⁵⁵ See also CPT Factsheet on Women in detention, Section 5: Gender-sensitive prison management, staffing and training - CPT/Inf(2018)5.

⁵⁶ See Rules 29 to 33 and Rule 35 of the Bangkok Rules.

On the other hand, at Brians 1 and Ponent Prisons, the delegation had the impression from several of the cases examined that the harshest disciplinary sanction of solitary confinement was being applied for less serious offences such as verbal abuse. One woman at Brians 1 Prison was placed in provisional solitary confinement (RP Article 243.1) following a verbal altercation with another prisoner for six days and, at the time of the visit several weeks later had still not been informed about the disciplinary outcome. Article 243.1 and 2 of the Prison Regulations envisage that provisional solitary confinement should be adequate, proportionate and applied only where strictly necessary as a preventative measure; it is clearly not meant for holding prisoners in provisional isolation for prolonged periods for minor offences.⁵⁷

Moreover, at Ponent Prison, there were a number of cases of women prisoners being given a disciplinary sanction of consecutive periods of solitary confinement which went beyond 14 days. The CPT considers that every effort should be made to limit the use of solitary confinement as a disciplinary punishment and that alternatives ought wherever possible to be found rather than imposing consecutive periods of 14 days of solitary confinement.

The recommendations made in paragraphs 80 and 81 above apply equally to women prisoners. Further, the CPT would appreciate the comments of the Catalan regional authorities on the above remarks.

111. The conditions in which disciplinary sanctions or provisional isolation measures were carried out in the women's units of Brians 1 and Ponent Prisons have been described above in the section on the DERTs.

As regards Wad-Ras, there was a unit in the basement of the establishment containing three cells which were primarily used for prisoners serving a sanction of solitary confinement and another three cells which were equipped for implementing the measure of fixation.⁵⁸ These cells were dilapidated and filthy, as well as being unsafe as they contained multiple ligature points. Women held there complained of rats and cockroaches in their cells. These cells are not fit for purpose and should not be used for holding prisoners overnight.

The CPT recommends that the basement unit in Wad-Ras Prison no longer be used to accommodate prisoners overnight. Persons serving a disciplinary sanction of solitary confinement should be placed in an appropriate location elsewhere in the establishment.

⁵⁷ Article 243.4 envisages that any period of provisional isolation should be deducted from any subsequent disciplinary sanction of solitary confinement. However, a minor offence such as a verbal altercation with another prisoner should not result in a disciplinary sanction of solitary confinement and thus the period of provisional isolation cannot be compensated.

⁵⁸ The measure of mechanical fixation has not been applied for three years in the prison.

112. Regarding contacts with the outside world, the same rules outlined above in paragraph 82 in respect of male prisoners also applied to women prisoners. Given that women prisoners are far more likely than male prisoners to be the primary carers for any children they might have, it is important that every effort is made to promote contacts between a mother and her child(ren). In general, the system of promoting contacts can be considered good. Nevertheless, a number of foreign national women prisoners complained that the cost of telephoning to their country of origin to speak with their children was prohibitive. A number of jurisdictions in Europe have started to introduce the possibility of prisoners using Voice over Internet Protocol (VOIP) technologies to stay in touch with their families. For foreign national women prisoners who are the primary carers for their children, such an option should be promoted. Other women prisoners stated that their contacts with their families were impacted by the fact that the prison phone system would not allow them to make calls to mobile phones, and yet that was the primary if not the only means of telecommunications possessed by their family members.

The CPT recommends that the prison administration modernise their approach to this issue, including by examining the possibility for prisoners to maintain contact with their families through using Voice over Internet Protocol (VOIP) and of being able to make calls to mobile phones from prison.

113. Foreign national women prisoners comprise about 50% of the female prison population in Catalonia, and many of them are mothers with children in their country of origin. With this in mind, the CPT considers that every effort should be made to offer these women the possibility to be transferred back to their countries of origin, following their application or with their informed consent, to serve their prison sentence, in line with Bangkok Rule 53.⁵⁹ In this context, the CPT has noted that the Council of Europe Convention on the Transfer of Sentenced Persons (ETS 112) has been ratified by 20 non-European States, including nine countries from Central and South America, as well as by 46 Council of Europe member States. Other countries with large numbers of their citizens in prisons in Spain, including Catalonia, should be encouraged to ratify this Convention.

The CPT would appreciate the comments of the Spanish authorities on this matter. Further, it would like to be informed of the number of women prisoners who have been transferred back to their country of origin to serve their prison sentence for the years 2015 to 2018.

⁵⁹ Rule 53.1: Where relevant bilateral or multilateral agreements are in place, the transfer of non-resident foreign-national women prisoners to their home country, especially if they have children in their home country, shall be considered as early as possible during their imprisonment, following the application or informed consent of the woman concerned.

Sindic de Greuges (Office of the Ombudsman)

Rafael Ribó I Massó Ombudsman

Jaume Saura Deputy Ombudsman

Ma Jesús Larios Deputy Ombudsman for Children's Rights

Mar Torrecillas adviser

C. Non-governmental organisations

Observatory on the Prison System and Human Rights (OSPDH), University of Barcelona

Irídia, Centre per la Defensa dels Drets Humans