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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 14 to 28 September 2020

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 (2021) 28.

Strasbourg, 9 November 2021

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EXECUTIVE SUMMARY

During the September 2020 visit, the CPT's delegation examined the treatment and conditions of detention of men and women held in several prisons and in the two penitentiary psychiatric hospitals of Alicante and Seville, as well as in a detention centre for juveniles in Algeciras. Further, the treatment and safeguards offered to persons deprived of their liberty by the police were also examined.

The CPT's visit took place during the COVID-19 pandemic. The restrictions imposed on persons deprived of their liberty and the measures taken in places of detention for public health protection had largely succeeded in restricting the propagation of the Sars-Cov-2 virus. The CPT recalls the importance of ensuring that staff in prisons wear face masks and that prisoners in quarantine are offered daily outdoor exercise but is otherwise positive of the approach taken by the Spanish authorities in difficult circumstances.

The cooperation received by the CPT's delegation during the visit was excellent.

Law enforcement establishments

Although most persons stated that they had been treated correctly by law enforcement officials, the CPT's delegation received a significant number of allegations of ill-treatment, including of juveniles, which mainly concerned the *Policia Nacional*. The ill-treatment was purportedly inflicted as a means to force the suspects to provide information or to confess to particular crimes or to punish them for the alleged crime committed. In addition, the delegation heard some allegations of verbal abuse by police officers towards detained persons, in particular foreign nationals, and of excessively tight handcuffing. The report references a number of cases of ill-treatment by way of illustration.

Concerted action is required to tackle the problem of ill-treatment by law enforcement officials. This should include a clear message by the Minister of the Interior and police leaders that such behaviour is illegal and unprofessional, and that it will be sanctioned accordingly. Further, the CPT reiterates the importance of proper oversight and training of law enforcement officers, and of the need to carry out effective investigations into allegations of ill-treatment. It also emphasises the importance of CCTV recordings being stored for a minimum of 30 days at all law enforcement facilities.

As regards the practical operation of safeguards related to the deprivation of liberty by law enforcement agencies, steps should be taken to ensure that Article 520 of the Code of Criminal Procedure is fully implemented. This applies notably to information on rights, access to a lawyer and to a doctor and to ensuring custody records are accurately and comprehensively filled out. The CPT also recommends that the electronic recording of all police interviews be introduced.

As regards material conditions in police stations, poor ventilation, inadequate artificial lighting and no access to natural light remain the primary deficiencies. A couple of establishments were also in a poor state of disrepair and the cells overcrowded.

Prisons establishments

The CPT notes positively the continued reduction in the overall prison population rate from 133 to 117 per 100,000 inhabitants between 2016 and 2020, primarily due to the increase in non-custodial sanctions and the reduction in the length of sentences for certain criminal offences.

Prison establishments for men (Castellón II, Madrid V and VII, Seville II and Valencia Picassent)

The majority of prisoners interviewed by the CPT's delegation in the course of the 2020 periodic visit did not allege any ill-treatment by staff. However, in all the prisons visited prisoners referred to a number of officers who would seek to provoke conflict or who would use any pretext to demonstrate their power over inmates. The CPT's delegation received a large number of consistent and credible allegations of recent physical ill-treatment by staff. In most instances, the alleged ill-treatment consisted of slaps to the head and body but, in a number of cases, it consisted of punches, kicks and blows with batons and even of *falaka (bastinado)*.

In a few cases, the allegations of ill-treatment were supported by injuries observed by the delegation or noted down in medical records. The report includes a sample of cases by way of illustration. Overall, the findings demonstrate that a pattern still exists of physical ill-treatment inflicted by prison officers as a disproportionate and punitive reaction to recalcitrant behaviour by prisoners. The widespread nature of the allegations of ill-treatment in the prisons visited is of serious concern to the Committee. The CPT sets out a series of measures that the Spanish authorities should take to tackle the alleged ill-treatment, including better oversight by management, enhanced training of staff in the use of control and restraint and de-escalation techniques, more rigorous documentation of all injuries, immediate and systematic reporting of allegations of ill-treatment to the competent prosecutorial authorities and the carrying out of effective investigations. Further, steps should be taken to ensure that CCTV systems in all prisons are fully operational as they offer a valuable additional safeguard for both prisoners and staff.

The material conditions in the prisons visited could be considered adequate in the ordinary regime modules and good in the "respect" modules. In terms of regime, the COVID-19 pandemic had resulted in most activities being curtailed, requiring greater efforts to be made to organise activities within each module. Steps should also be taken to better orient the individual treatment plans (PIT) towards prisoners' needs and to involve them in the process.

As regards prisoners placed in a closed regime module, the CPT's delegation found that they were not offered an adequate range of activities or sufficiently supported to assist them in integrating into an ordinary regime module. It also found that the 1st degree classification review process needed to be improved.

The CPT again examined the application of mechanical fixation to a bed of inmates for regime purposes (*sujeción mecánica regimental*). It noted the considerable progress in the reduction of the application of the measure and in its duration. Nevertheless, the CPT continues to view the measure as one that is open to abuse and requiring even stricter safeguards. These include reducing its duration still further, improving the supervision and recording of the measure, ending its application to mentally ill prisoners and to those prisoners who self-harm, and ending the forced medication of fixated prisoners. In the CPT's view, the longer-term goal should remain its abolition.

The findings of the 2020 visit reinforced the CPT's view that the Spanish authorities should proceed immediately with the preparation of the transfer of prison health care to the national health service as envisaged by Law 16/2003. Transfer would *inter alia* reinforce through-care with the community and guarantee the independence of health care staff. Although the provision of health-care services in the prisons visited were on the whole of an acceptable standard, there remain a series of challenges which need to be addressed such as a lack of nursing staff, shortfall in doctors (GPs), an insufficient psychiatric and clinical psychologist presence, poor working conditions and dual-loyalty conflicts.

The treatment of mentally ill prisoners at Castellón II and Valencia (Picassent) Prisons was totally inadequate, and steps should be taken to ensure that the specialized modules for the treatment of inmates with mental disorders (PAIEMs) are properly resourced to care for and treat such prisoners. On a positive note, the CPT found that prisoners with learning disabilities held in the specialised care department at Madrid VII Prison were well-supported.

As regards the disciplinary procedure, the formal safeguards appear to operate satisfactorily but the CPT considers that three areas warrant examination and remedial action. One, the length of time that may pass between the infraction and the date when the disciplinary sanction is actually served, especially when prisoners are transferred to another establishment. Two, the continued application of a measure of solitary confinement for a period in excess of 14 days without any proper respite. Three, the practice of prisoners continuing to be disciplined, including being placed in solitary confinement, for an act of self-harm.

The CPT again has concerns over the effectiveness of the supervisory judges in the prisons visited in exercising their independent and impartial supervisory functions. This matter should be addressed by the State Judicial Council (*Consejo General del Poder Judicial*).

Prison establishments for women (Ávila and Modules 9 and 10 at Madrid VII Prison)

The CPT sets out the importance of developing a specific prison policy oriented toward women's particular biological and gender-specific needs and vulnerabilities. The Spanish 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. The Spanish authorities should introduce such an approach at prisons accommodating women.

The vast majority of women prisoners met stated that they were treated correctly by prison staff, notably at Ávila Women's Prison, although a couple of allegations of ill-treatment and of verbal abuse were received.

The material conditions of detention were generally of a satisfactory standard. However, more needs to be done to develop the range of non-gender stereo-typed activities on offer to women prisoners which will assist their reintegration into the community.

Health care services at Ávila Women's Prison were generally good but suffered from the uncertainty of whether the provision of GP services by a private clinic would continue. Further, there is a need to develop the admission procedures to take into account gender-specific needs, including screening for sexual gender-based violence. In addition, there is a need to adopt a policy on preventing and reducing instances of self-harm of women prisoners and to ensure that women who do self-harm or who are at risk of self-harming are always dealt with from a therapeutic standpoint and not a punitive one. Such a policy must include specific training for staff. The CPT also considers that prisoners should no longer be tasked to act as permanent observers of other women prisoners at risk of committing an act of self-harm or suicide.

In relation to staffing, the CPT considers that all custodial staff working with women prisoners should receive gender-specific training. Further, it considers that the overall ratio of female prison officers to male prison officers working in women's prisons and detention units, and notably the number of female prison officer managers (*Jefe de servicios*), should predominate.

Contacts with the outside world need to be improved for women prisoners, given that they are often located at a great distance from their families and that they 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).

Prison Psychiatric Hospitals of Alicante and Sevilla

At the outset, the CPT wishes to state that forensic psychiatric establishments such as the Prison Psychiatric Hospitals (PPHs) should enjoy full institutional and functional separation from the prison service given the different ethos and staffing profile which characterise them. Therefore, in the CPT's view, these hospitals should be under the responsibility of the national health-care system (*Sistema Nacional de Salud*) which is better placed to provide the support required by both patients and staff. In this respect, it should also be noted that there is an urgent need to increase the presence of psychiatrists, psychologists and occupational therapists at both hospitals.

Patients met by the delegation at both PPHs generally spoke positively of the way in which they were being treated by staff. However, a few allegations of physical ill-treatment consisting of blows with rubber batons and of painful and improper mechanical fixation were received at both establishments. In particular, the CPT's delegation uncovered one case of ill-treatment of a patient at Sevilla PPH through the examination of the relevant CCTV recording of his mechanical fixation.

In terms of living conditions, the CPT is critical of the carceral design and austere setting of the PPHs, with cells and communal facilities also lacking personal lockable space and an absence of decoration as well as noisy and cramped communal facilities. The CPT concludes that such a setting is not conducive to a truly therapeutic approach and that the plans of the Spanish authorities to transfer the PPHs to more adequate facilities should be accelerated.

The treatment provided to forensic psychiatric patients at both PPHs consisted mainly of pharmacotherapy. This did not come as a surprise given the lack of psychiatrists, psychologists, nurses and occupational therapists present at both establishments. It meant that there was little in the way of individualised treatment for patients. Further, certain patients affected by resistance schizophrenia appeared to be over-medicated. The CPT is also critical of the finding that in several instances the consent of patients to accept the prescribed treatment appeared to have been coerced by staff. In sum, the Spanish authorities should consider introducing a much-needed paradigm shift in the treatment of forensic patients based upon the principles set out in the report. In addition, they should review the pharmacological treatment of certain patients as well as reinforce the legal safeguards surrounding the involuntary treatment of patients.

As regards means of restraint such as seclusion and mechanical fixation, the CPT is critical of the practice at Sevilla PPH, in particular, of prolonged restrictions of liberty imposed on patients for as long as four months without appropriate legal safeguards and inadequate judicial review. The Committee also found that the prolonged mechanical fixation at Sevilla PPH contained punitive elements which, when coupled with the infliction of physical ill-treatment of patients, forced medication and denial of access to a toilet, may amount to inhuman and degrading treatment.

Further, once again the CPT noted that supervisory judges appeared to be rubber-stamping the decisions of the management in respect of the resort to means of restraint of patients. More needs to be done to ensure that supervisory judges exercise an impartial and independent control over the work of PPHs.

As regards the legal safeguards surrounding the placement, discharge and involuntary treatment of forensic psychiatric patients at the two PPHs, the CPT recommends that patients are heard in person by the competent judicial authorities at the time of the review of their security measure. Further, the provisions of the Law on Patients No. 41/2002 concerning patient rights in respect of the provision of medication without their consent should be fully applied. As regards legally incapacitated patients, the consent of guardians should always be systematically sought. Steps should also be taken to draw up an information brochure for patient and their families covering all aspects of the facility and patients' rights.

Juvenile Detention Centre “La Marchenilla” in Algeciras

The CPT gained a positive impression of the caring attitude of staff at the establishment and of their commitment towards restorative justice. That said, several juveniles who were deemed to have disrupted the good order of the centre complained about the rough behaviour of the security staff in their restraint and tight handcuffing. A clear message on the use of minimum force only should be delivered to security staff, combined with adequate training on de-escalation and restraint measures.

In terms of material conditions, the centre was in a good state of repair and hygiene. However, the overall carceral environment and design in the residential modules (horizontal metal bars on the windows, reinforced metal doors and barred sliding gates) is not appropriate for a rehabilitative centre for juveniles. Such elements should be removed and adequately replaced to render the centre less carceral.

The CPT gained a very positive impression of the regime and the range of activities on offer to juveniles at the centre, and of the commitment of staff in proposing individual therapeutic and rehabilitation plans for each resident.

The CPT again examined the resort to means of restraint and mechanical fixation of juveniles, having recommended that the measure be abolished for juveniles in its report on the Committee's 2016 visit to Spain. At the time of the visit, the Andalusian regional authorities had recently adopted a new Instruction 02/2019 to surround the measure of fixation with additional safeguards. Nevertheless, the CPT concluded that, although staff was in principle showing a professional attitude in the restraint of juveniles and was engaging constructively in dialogue towards de-escalation, there remained problematic issues. These included, prolonged periods of fixation, forcible injections of fixated juveniles and the rough restraining methods and tight handcuffing by security staff. The CPT again calls upon the Spanish authorities to abolish reduced and prolonged mechanical fixation of juveniles.

Finally, the CPT recommends that the resort to solitary confinement of juveniles for up to seven days for disciplinary purposes should be ended in the light of the generally recognised international standards, notably the recently adopted updated European Prison Rules. It also recommends that the current practice used when carrying out strip-searches, which are invasive and potentially degrading, be brought into line with the CPT's precepts.

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 14 to 28 September 2020. The visit formed part of the CPT’s programme of periodic visits for 2020 and was the Committee’s eighth periodic visit to Spain.¹

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

- Therese Rytter, 2nd Vice-President of the CPT, Head of Delegation
- Mark Kelly, 1st Vice-President of the CPT
- Vincent Delbos
- Vanessa Durich
- Aleksandar Tomčuk.

They were supported by Hugh Chetwynd (Head of Division) and Christian Loda of the Committee's Secretariat, and assisted by three experts:

- Celso Manata, Deputy General Public Prosecutor and former Director General for Prisons and Probation, Portugal
- Birgit Völlm, Professor in forensic psychiatry and Medical Director, Rostock University, Germany
- Olivera Vulić, psychiatrist and prison health consultant, Montenegro.

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

4. The report on the visit was adopted by the CPT at its 104th meeting, held from 1 to 5 March 2021, and transmitted to the Spanish authorities on 29 March 2021. 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.

¹ The reports on previous CPT visits to Spain and related Government responses are available on the Committee’s website: <http://www.coe.int/en/web/cpt/spain>.

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

5. In the course of the visit, the CPT's delegation met with Mr Fernando Grande-Marlaska, Minister of the Interior, Mr Ángel Luis Ortíz Gonzáles, Secretary General for Prison Institutions and Ms Elena Garzón Otamendi, Director General for International Relations and Migration at the Ministry of the Interior. It also held exchanges with senior officials from the Ministry of the Interior representing the Prison Administration, *Guardia Civil* and *Policía Nacional*.

The delegation held an exchange of views with the Office of the Ombudsman (*Defensor del Pueblo*) and members of the national preventive mechanism (NPM) team. Further, it held discussions with representatives of non-governmental organisations active in areas of concern to the CPT.

A list of the national authorities and organisations met by the delegation is set out in Appendix II to this report.

6. Notwithstanding that the visit took place during the COVID-19 pandemic, the co-operation received by the CPT's delegation throughout the visit was excellent in all the establishments visited. The delegation enjoyed rapid access to all places (including those which had not been notified in advance), was able to speak in private with all the detained persons it wished to interview and was provided with the information necessary for carrying out its task. Further, the CPT's delegation was encouraged by the constructive discussions held with the Minister of the Interior and the Secretary General for Prison Institutions at the end of the visit and their commitment to address the main shortcomings that had been identified by the delegation, notably in respect of prison matters. In the light of the Article 3 of the Convention and the need to address the longstanding recommendations put forward by the CPT, such an approach is to be welcomed.

The CPT would like to express its appreciation for the assistance provided before and during the visit by the CPT's liaison officer, Alberto Ruiz Moreno from the Ministry of the Interior.

C. Immediate observations under Article 8, paragraph 5, of the Convention

7. At the end of the visit the CPT's delegation presented its preliminary findings to the Spanish authorities in the course of which it made one immediate observation under Article 8, paragraph 5, of the Convention concerning the need to relocate a young person with a mental illness who had spent a considerable amount of time in *de facto* isolation at "La Marchenilla" juvenile detention centre in an appropriate specialised therapeutic centre. By letter received on 5 October 2020, the Spanish authorities informed the Committee that the juvenile in question had been admitted to a specialised hospital in Malaga on 1 October 2020.

Further, by communications of 5, 7 and 8 October 2020 as well as of 19 January 2021, the Spanish authorities provided the Committee with information on various issues raised by the CPT's delegation in its preliminary observations. The information provided has been duly taken into account in the drafting of this report.

D. National Preventive Mechanism

8. Spain ratified the Optional Protocol to the United Nations Convention against torture and other cruel, inhuman or degrading treatment or punishment (OPCAT) in April 2006 and, as of 5 November 2009, designated the National Ombudsman (*Defensor del Pueblo*) as the National Preventive Mechanism (NPM). The Spanish NPM is staffed by seven members (including one head and two administrative staff), has an annual budget of approximately 750,000 EUR and operates as an independent unit within the *Defensor del Pueblo* focussing exclusively on preventive activities.² An annual report on the activities of the NPM is presented to the Parliament by the *Defensor del Pueblo*. Although the activities of the NPM were curtailed in 2020 due to the COVID-19 pandemic, first-time and follow-up visits³ (both virtual and in-person) were carried out to various establishments of deprivation of liberty to monitor *inter alia* the impact of the COVID-19 restrictions as well as to examine thematic issues such as the resort to the use of mechanical fixation in prisons and in juvenile detention centres.

Nevertheless, the CPT considers that given the number of places of deprivation of liberty within Spain that the NPM has to regularly examine as well as its other responsibilities, such as the monitoring of return flights and submission of proposals and observations concerning existing and draft legislation, the CPT invites the Spanish authorities to consider increasing the resources made available to the NPM in order to enable it to discharge its mandate effectively, as set out in Article 18(3) of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The CPT invites the Spanish authorities to review the budgetary resources allocated to the NPM.

² The NPM is assisted by contracted experts in the field of psychiatry, psychology and forensic medicine.

³ For example, in the course of 2020 the NPM had conducted a total of 78 first-time or follow-up visits to various places of deprivation of liberty (including the monitoring of three return flights operated by Frontex).

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Law enforcement agencies

1. Preliminary remarks

9. As regards the basic legal framework governing the deprivation of liberty by law enforcement agencies, important changes have been introduced by Organic Law 13/2015 which amended certain provisions of the Code of Criminal Procedure (CCP). The aim of the amendments was to transpose several EU directives⁴ into the Spanish legislation and to strengthen procedural safeguards offered to persons subject to criminal proceedings. The legal framework regulating the application of the *incommunicado* detention regime has not changed since 2016.⁵

The time limits for deprivation of liberty by law enforcement agencies have remained unchanged. 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”. The examination of custody registers in the police establishments visited and the information gathered through interviews with persons who were, or who recently had been, in police custody revealed that the time limit for deprivation of liberty by the police was respected in practice and that police detainees appeared in person before a judge to be remanded in custody.

In the case of minors, police detention cannot last more than 24 hours. Further, the minor will have to be put at the immediate disposal of the Child Prosecutor (Article 118 of the CCP).

That said, **the CPT would appreciate clarification from the Spanish authorities concerning the interpretation of Article 496 of the CCP** which appears to imply that police custody should not last longer than 48 hours whereas Article 520 of the CCP and Article 17(2) of the Constitution both refer to a maximum period of 72 hours for police custody.

⁴ Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings, Directive 2012/13/EU on the right to information in criminal proceedings and Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

⁵ See the CPT report on the 2016 visit: CPT/Inf (2017) 34, paragraphs 29 to 38.

10. In the report on the 2016 visit, the CPT recalled that the situation of persons in police custody/remand prison to whom the incommunicado detention regime is applied, including the safeguards offered to such persons, has been the subject of a longstanding dialogue between the CPT and the Spanish authorities. It also noted that the legal framework of the incommunicado detention regime (Articles 509, 510, 520 *bis* and 527 of the CCP) underwent major changes with the entry into force on 1 November 2015 of amendments introduced to the CCP by Organic Law 13/2015 which limited its scope of application and distinguished among the individual restrictions which may be imposed on detained persons.⁶

These developments were assessed as going in the right direction in terms of circumscribing the harshness of the measure. However, the Committee wishes to reiterate that the incommunicado detention regime continues to retain a potentially significant limitation of fundamental safeguards which should be offered to all detained persons; this in turn potentially opens the door to ill-treatment and (possibly false) allegations thereof. The CPT understands the historical reasons for the introduction of the incommunicado detention regime in Spanish legislation. However, **the Committee considers that, as a matter of principle, the possibility to impose the incommunicado detention regime should be removed altogether from the Spanish legislation.**

In the meantime, pending the complete abolition of the regime, **the CPT reiterates its recommendation that the application of the incommunicado regime to all persons under the age of 18 be prohibited.**

Further, **the Committee reiterates its position that all detained persons should be allowed to meet a lawyer in private, from the outset of their detention and thereafter as required.**

11. In terms of preventive measures related to the COVID-19 pandemic for persons in police detention, the CPT's delegation was informed at the outset of the visit of the instructions adopted by the Secretary of State for Security on the distribution of face masks to all detained persons, hygienic measures enforced in detention areas (i.e. systematic disinfection of cells upon transfer of detainees, revision of their capacity etc.). In the course of the visit, the CPT's delegation noted that in certain police stations with a high turnover such as Leganitos in central Madrid, it was not possible to limit the number of persons held in the small cells nor was it apparent that clear Covid-19 protocols were being respected. Certainly, detained persons were not all provided with masks and not all police officers appeared appropriately protected given the cramped conditions in the detention area. In other police stations such as Zapadores in Valencia, appropriate measures were being taken by the custodial officers and the cells were not too crowded. **The CPT recommends that the Spanish authorities ensure that all police stations follow COVID-19 protocols and that all police officers and detained persons are provided with the necessary personal protective equipment.**

⁶ Unlike in the past, a decision to impose the incommunicado regime does not now automatically entail the application of the full range of possible restrictions on the detainees' rights. Instead, the judge, by way of a reasoned decision, must determine which restrictions, among those provided for by law, will apply to a particular detainee, and define the extent of these restrictions (Article 527 of the CCP). Any restriction may only be imposed if justified by the circumstances of the particular case and to the extent necessary.

2. Ill-treatment

12. It is important to reiterate that, as was the case in the past, most persons met by the CPT's delegation in the course of the 2020 visit stated that they had been correctly treated by law enforcement officials both at the time of their apprehension and while in police custody. However, the delegation did, once again, receive a significant number of allegations of ill-treatment and excessive use of force upon apprehension, including of juveniles. The alleged ill-treatment related to:

- the time of apprehension, after the persons had been brought under control (and handcuffed);
- the time when the suspects were being transported to the police station;
- the time when the suspects were held in an office in the police station.

The ill-treatment was purportedly inflicted as a means to force the suspects to provide information or to confess to particular crimes⁷ or to punish them for the alleged crime committed.

The alleged ill-treatment consisted primarily of slaps, punches and kicks to the body and/or head as well as, on occasion, the use of batons or other objects. It should be noted that the delegation again received many allegations, in particular from foreign nationals, that police officers insulted them verbally and referred in derogatory terms to the colour of their skin or their origin.

13. The CPT wishes to highlight the following cases of alleged ill-treatment. While some of the persons met by the delegation stated that they wanted to make a complaint about the ill-treatment,⁸ others provided information on the condition that their names would not be divulged.

- i. A foreign national juvenile (HE) was apprehended at 15h00 on 26 September 2020 at *Casa de Campo* in Madrid. He alleged that five police officers came to arrest certain other juveniles and that he got into a verbal argument with them which led to one officer slapping him on the neck and throwing him to the ground. He was immobilised on the ground with one officer placing a knee on his head and another on his back while his hands were cuffed behind his back. Subsequently, he alleged that he was subjected to multiple kicks, punches and baton blows to various parts of his body while lying prone on the ground. The SAMUR (emergency doctor) that came to the police station noted "*hematoma on the left elbow and left shoulder*" in addition to a visible excoriation (wearing away of the skin) on his forehead.

Further, another juvenile who was being held in a separate cell told the delegation that he had seen HE being beaten. In addition, the actions of the police had apparently been witnessed by staff and other juveniles from the *Casa de Campo*.

⁷ Notwithstanding Article 126 of the Code of Criminal Procedure on forbidden methods of evidence.

⁸ In this respect, it is incumbent upon each person to lodge a complaint with the relevant authorities as providing the CPT with details of an allegation of ill-treatment does not constitute an official complaint. This was made clear to the persons met by the CPT's delegation during the visit.

- ii. A person (AEK) alleged that he had refused to allow six police officers to search his café in Valencia at around 4h00 in the morning of 22 September 2020 but when he and his eight friends had exited the café he had been requested to come to the police station as he could not produce an identity card. At the police station, the police officers allegedly spoke about the fact he had denied them access to his café and one of them said he would be fined for not wearing a mask. AEK replied that “he did not care” and apparently took out the requisite money to pay the fine whereupon the police officer pushed him against the wall and punched him in the face. Other officers took hold of his arms, twisted them and applied handcuffs tightly. At 6h00 he was transferred to Zapadores Police Station whereupon he was taken to an emergency medical centre. The CPT’s medical doctor noted handcuff marks on both wrists and a subconjunctival haemorrhage in the left eye when AEK was interviewed some 10 hours later.
- iii. A person (PSM) recounted that when he was apprehended in a park in Valencia on 26 August 2020, he had obeyed a police officer’s instruction to stand up and put his hands in the air. However, while standing with his hands in the air a second officer had approached him from behind and struck him with a truncheon to the right side of his ribcage causing him to fall to the ground. Subsequently, he was handcuffed and taken to Zapadores Police Station. The next day at 16h00, complaining of pain, he was taken to hospital where an x-ray revealed a fracture of the ribs nos. 6 and 9. The medical report did not note the cause of the injury while the police report stated he had hurt himself.
- iv. A person (SM), who was arrested at home on 8 August 2020 and taken to *Plaza de España* Police Station in Valencia, alleged that when he was taken into an office, while still handcuffed behind his back, he was thrown on the floor and subjected to kicks and punches to his body and head. Subsequently, he was taken to Zapadores Police Station where he saw a doctor who noted down: “pain in left ribs, contusion of ribs, injuries on the head”.
- v. A person alleged that he was apprehended on the street in Torrente by six officers on 19 June 2020 who, after placing him on the ground, proceeded to deliver several kicks to his legs. Further, while being transported in a vehicle to the police station with his hands cuffed behind his back, he said that he was punched in the stomach and the face apparently because the officers wanted him to confess to a robbery. Upon admission to prison on 23 June, the prison doctor noted “*periorbital bruising, left eye*” and a photograph taken at this time for administrative reasons showed a black left eye.
- vi. A foreign national (AQ) with poor Spanish alleged that on 11 June 2020 that he was apprehended by police officers in civilian clothes and that once he had been put on the ground, he had had a pistol pointed to his head and had received several truncheon blows to his body. He claimed that he was lined up with eight other suspects and made to kneel down in front of a wall while handcuffed behind his back. Subsequently, he was taken around the corner where several officers inflicted multiple punches to his body; allegedly similar treatment was meted out to two other suspects as well. After a period of around six hours of kneeling while handcuffed, all the suspects were transported to Zapadores *Policía Nacional* Station in Valencia. Subsequently, he was taken to hospital and treated.

The CPT’s delegation interviewed another person in a separate module of Valencia (Picassent) Prison who described having witnessed AQ being ill-treated by the police.

- vii. A person (AMG) who was apprehended on the street in Valencia on 21 May 2020 alleged that during his transport to the police station, the police stopped the vehicle and took him out of the car. They claimed that he was armed with a knife and allegedly threw him to the ground, cuffed his hands behind his back and delivered several blows with a hard object to the back of his head, forehead and nose. Subsequently, he was taken to Hospital la Feé Nueva where, while handcuffed and in the presence of two officers, the wounds were treated. According to the ‘Urgent Medical Report’, AMG had alleged that the police had beaten him on the head. The medical findings noted superficial wound on the forehead and ‘an incised-contusion wound’ that required four staples on the scalp as well as a nasal contusion. Upon entry to Valencia Picassent Prison, the doctor had noted the injuries as being supportive of his allegations and the Chief duty officer (*Jefe de Servicios*) had informed the Director that AMG stated that his injuries had been caused by the police.
- viii. A juvenile stated that on 25 March 2020, he had been brought to G.R.U.M.E police station by a police officer from Hortaleza police station. This officer apparently told the G.R.U.M.E officers that the boy had caused him lots of problems. He allegedly took the boy into a cell, placed a blanket over his head and struck him several times with a truncheon to his legs. A little later, the custodial staff had entered the cell to search him and although he had stated he had nothing in his pockets, they had found a lighter whereupon one officer had become annoyed, taken the lighter and thrown it at EHH’s face causing his cheek to start bleeding. Afterwards, another officer allegedly slapped him several times and kicked his legs. As the injury to his cheek continued to bleed a doctor was called to the station but he was examined in the presence of the police officers who apparently stated that EHH had tried to escape. At the time of the delegation’s visit, EHH displayed discoloured skin patches in the region of the left cheek bone and under the left labial commissure of the mouth, light pink.

The CPT’s delegation raised a few of above-mentioned cases of alleged ill-treatment during its visit to Zapadores Police Station in Valencia. However, the senior duty officers were unable to provide the delegation with any information on whether these cases were being investigated. In light of the number of cases of alleged ill-treatment received in Valencia, **the CPT would like to be informed about any investigations that have been carried out into cases ii, iii, iv, vi and vii above. Further, it would like to be informed of the investigative steps that have been taken with regard to case i.**

14. The CPT also wishes to raise the credible allegation of physical ill-treatment by *Guardia Civil* officers of a detainee (FJM) whom they had transferred to the cells at the Local Police station in Utrera on 13 September 2020. He alleged that, following an escape attempt, he had been kicked and struck with batons by *Guardia Civil* officers on the front steps and in a corridor of the Local Police Station, in areas that he surmised had been covered by Local Police CCTV cameras. His account of the manner in which he had been ill-treated was corroborated by another detainee interviewed by the delegation separately who claimed to have been present at the time.

In light of the credibility of these allegations, the CPT’s delegation visited the Utrera Local Police Station to check the custody records and to examine any CCTV footage that might further corroborate or disprove the detainee’s account. Custody records showed that FMJ had been detained at Utrera Local Police at the relevant time, following a transfer by the Civil Guard, and that the areas of the station in which he alleged that he had been ill-treated were indeed covered by CCTV.

However, the recording mode of the station's CCTV system had not been activated, no footage was being stored from any camera and the server designed to store such recordings was 99.9% empty. The only available live video feed was to a set of screens at the front reception desk. The delegation tested the CCTV system and found that the police officer watching those screens could make "video grabs" of specific events, but that no such footage had been recorded in recent times.

15. Following the visit, the Committee raised its concerns about this case with the Spanish authorities, who responded with an information note drawn up by the *Guardia Civil* on 29 October 2020. This asserts that the injuries that FJM suffered were due to the proportionate force that had to be used by *Guardia Civil* officers to recapture him after he had fled their custody upon alighting from the transport vehicle. The report also states that the second detainee who was still in the vehicle could not have witnessed the apprehension as it had occurred out of sight of the vehicle at a distance of 150m.

The CPT appreciates this response but observes that it leaves a number of unexplained discrepancies. First, during the visit to the Utrera Local Police Station, the Chief of the Utrera Local Police (himself on secondment to the Local Police from the *Guardia Civil*) volunteered the information that, to his knowledge, there had been no attempted escapes by detainees in recent times. If there had been, he said, he would have notified the relevant judge. Secondly, having visited the Local Police premises, it is clear that at least some of the ill-treatment alleged, on the front steps of the station, could have been within the line of sight of the eyewitness.

The regrettable absence of CCTV recordings of the incident in question renders it virtually impossible to resolve these discrepancies. **The CPT recommends that, henceforth, the Spanish authorities ensure that all police stations in the country be required to store all their CCTV recordings for a minimum of 30 days to ensure that any allegations of ill-treatment made against law enforcement officials in areas covered by cameras may be verified and the allegations either dismissed or further investigated.**

16. In light of the delegation's findings and observations in the course of the 2020 visit, the Spanish authorities should vigorously explore all means to ensure that the message of zero tolerance of ill-treatment of detained persons reaches law enforcement officials at all levels; they should be made aware, through concrete action, that the government is resolved to stamp out ill-treatment of persons deprived of their liberty. Combating ill-treatment entails not only the adoption of the appropriate legal norms but also taking the necessary steps to ensure their implementation including the timely transmission of information on allegations of ill-treatment to the competent prosecutorial authorities

Further, putting an end to ill-treatment by law enforcement officials requires a multifaceted approach, comprising: a competitive recruitment process of police officers based upon clearly defined selection criteria; an educational training course for all new recruits and existing police officers with a particular emphasis on technically advanced methods of crime investigation based on human rights principles; the accountability of senior officers for their line management responsibilities; the application of appropriate sanctions (criminal and disciplinary) for the perpetrators of ill-treatment and for those who fail to prevent or report it; and the existence of effective and independent procedures for examining complaints and other relevant information regarding alleged ill-treatment by police officers.

The CPT recommends that the Minister of the Interior and the Heads of the *Policía Nacional* and *Guardia Civil* deliver a strong message that the ill-treatment of detained persons is illegal, unprofessional, and will be the subject of appropriate sanctions. This message should be reiterated at appropriate intervals at the level of regional police directorates. Further, the relevant authorities should ensure that an effective investigation is carried out into every allegation of ill-treatment and that senior officers are held accountable for their line-management responsibilities. The corollary of this is that law enforcement officials are sufficient in number and adequately resourced to carry out their tasks professionally.

17. In the course of the visit, the CPT's delegation met many persons who complained about excessively tight handcuffing and in a number of instances it met persons who still bore marks caused by the handcuffs weeks and even months afterwards. Further, several persons complained of being handcuffed for prolonged periods and others of having their arms pulled upwards while handcuffed in hyper-extended manner and being forced to walk in such a position for more than 100 meters. **The CPT recommends that the Spanish authorities ensure that, where it is deemed essential to handcuff a person, the handcuffs should under no circumstances be excessively tight⁹ and should be applied only for as long as is strictly necessary. Further, detained persons should not be handcuffed to fixed objects.**

In addition, in light of many allegations by apprehended persons that their hands had been cuffed behind their backs during transport,¹⁰ **the CPT recommends that such a practice should be avoided given the potential to cause unnecessary pain to the person concerned and the risk of injury in the case of accident.**

18. 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. However, 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 their being struck by police officers.

In light of the information gathered during the 2020 visit, **the CPT reiterates its recommendation that police officers be regularly reminded of these basic principles, including through practical training exercises. Further, every use of force by law enforcement officials should be properly documented (description of facts; any injuries sustained; whether the detained person was brought to hospital, etc.).**

⁹ It should be noted that excessively tight and prolonged handcuffing can have serious medical consequences (for example, sometimes causing a severe and permanent impairment of the hand(s) or thrombophlebitis in the arms).

¹⁰ The application of handcuffs to detainees during transportation should only be resorted to when the risk assessment in an individual case clearly warrants it. When the use of such means is considered absolutely necessary, it should be done in such a way as to minimise any risk of injury to the detained person.

19. The CPT also considers that the experience of other countries demonstrates that issuing Body Worn Video Cameras to law enforcement officials and their systematic use during any incidents, represent an additional safeguard against abuse by officials as well as a protection against unfounded allegations of ill-treatment. **The Committee would appreciate the comments of the Spanish authorities on this matter.**

20. In the course of the visit, the CPT's delegation found several objects such as sticks and baseball bats lying about in the detention areas or offices of the *Policia Nacional* Stations of Leganitos and Moratalaz in Madrid and of Castellón de la Plana. Apart from inviting speculation about improper conduct on the part of police officers, objects of this kind are a potential source of danger to staff and criminal suspects alike. Consequently, **any non-standard issue objects capable of being used for inflicting ill-treatment should be immediately removed from all police premises where persons may be held or questioned.**

3. Safeguards against ill-treatment

a. introduction

21. The 2020 periodic visit provided an opportunity to assess the impact of the 2015 amendments to the CCP¹¹ in terms of legal safeguards provided to persons deprived by their liberty by the police. The 2015 reform of the CCP was intended to reinforce the rights of detained persons. In particular, police officers must now ensure:

- the prompt provision of information to detained persons in “*writing, in easily understandable language and in a language they understand*” of their fundamental rights as provided for in Article 520 (2) of the CCP. Further, criminal suspects should retain physically information sheets in different languages throughout the entire period of detention;
- the prompt notification of custody to the family of the detainee or a third party without unjustified delay and in addition ensure another short telephone call monitored by staff. Foreign nationals should have the right to notify their respective consular authorities;
- the prompt access to a lawyer (either ex officio or of one’s choice) without unjustified delays through the notification of the relevant bar association as well as a confidential conversation with the appointed legal counsel prior and after the interrogation of the criminal suspect. The lawyer is under the obligation to come to the detention premises within three hours from the received notification;¹²
- the right to interpretation to detained persons who are not fluent in Spanish at any step of the chain of detention through the services of an existing accredited interpreter;
- the provision of information in writing on the maximum period of police detention¹³ and facilitation of the filing of a motion of “habeas corpus” at any time of the chain of detention.

Further, the adoption of Instruction 04/2018 provides *inter alia* for the mandatory training of police custody officers on the use of means of restraint, inter-personal communication and all aspects related to the admission, detention and release of persons detained in police establishments.

b. information on rights

22. Most of the persons interviewed by the delegation during the 2020 visit stated that they had been promptly informed of their rights at the time of their arrival at a police establishment, and custody registers showed that they had signed the relevant information sheets.

¹¹ Notably, through the reformulation of Article 520 of the CCP and in particular points (c), (e), (f) and (h) of Article 520 (2) of the CCP which address access to a lawyer, notification of custody, and right to interpretation.

¹² Previously this time frame had been eight hours.

¹³ I.e. 72 hours for adults and 24 hours for juveniles.

That said, it appeared that in some cases police staff did not pay due diligence in explaining to detained persons in an easily understandable language the content and implications of their rights and viewed the signature of the relevant information on the rights form as merely an administrative requirement. Further, detained persons were not allowed to keep these information sheets with them in the cells but had to place them in a locker with their other belongings. Indeed, at Seville National Police Station, the information sheets were even formally recorded as being part of the personal effects of detainees that had been retained by the police. Finally, although information sheets in up to 13 different languages are in general available at police establishments in Spain, a number of detained foreign nationals with no understanding of Spanish had only been provided with an information sheet in *Castellano*.

The CPT recommends that the Spanish authorities reiterate to law enforcement officers their obligation to inform all detained persons on their rights and that detained persons be allowed to retain a copy of the information sheet on their rights while in police custody. Further, detained foreign nationals who do not understand Spanish should be promptly provided with the services of an interpreter and they should not be requested to sign any statements or other documents without such assistance. They should also be provided with written information on the rights of detained persons in a language they understand.

c. notification of custody

23. The vast majority of persons met stated that they had been able to notify a third party of their detention shortly after their deprivation of liberty. Further, most persons had been able to make an additional phone call to a person of their choice monitored by police staff as provided for by Article 520 (2) of the CCP.

That said, some foreign nationals met by the delegation claimed that they had not been able to notify their families living abroad and it appeared that international calls were still not possible. **The CPT recommends that foreign nationals (and indeed any other person) in police custody be allowed to notify the fact of their detention to their family or a third person of their choice even if these persons live abroad (e.g. by making a free-of-charge phone call).**

Further, in the case of a group of nine juveniles detained at the G.R.U.M.E. in Madrid for the same offence, the records did not show that each family had been individually contacted by the police. **The CPT wishes to receive confirmation that in such cases, the family (or third party) of each juvenile should be separately informed by the police of the fact of the detention and the juvenile informed individually that such notification has taken place.**

d. access to a lawyer

24. The findings of the CPT's delegation in the course of the 2020 visit indicate that, notwithstanding the legal and procedural reforms of recent years, including amendment of the CCP, some persons detained by the police in Spain still had to wait for many hours after their apprehension before having access to a lawyer. For example, a group of five detained juveniles met by the delegation on 24 September 2020 at the G.R.U.M.E. police station in Madrid had not seen a lawyer more than 18 hours after their detention.

Lengthy delays before having access to a lawyer were also found in respect of adult detainees. Police officers confirmed that it remained the usual practice that an appointment would be made for the lawyer to be present at the moment it was anticipated that a formal declaration would be recorded, either by the police or before a judge. This could be some considerable time after a lawyer had been first contacted by the police. Custody records examined showed a pattern of extended periods between the moment of detention and the moment at which it was recorded that the detainee had either made a formal declaration to the police or before a judge.¹⁴ There was almost never any indication in the custody records (i.e., in the *cadena de custodia e incidencias* of the *libro registro y ficha custodia de detenidos*) that the persons concerned had been able to consult a lawyer before they first appeared before a judge or made a formal declaration to the police.¹⁵

Moreover, the time at which police officers had contacted the bar association (or a private lawyer), and at which a specific lawyer had been designated, was never indicated in the custody registers (i.e., in the *cadena de custodia e incidencias* of the *libro registro y ficha custodia de detenidos*).

In the light of its delegation's findings, the CPT considers that it remains necessary for the Spanish authorities to invest further efforts in ensuring that detained persons are facilitated to meet with a lawyer as from the very outset of detention, without any undue delay.

The CPT recommends that the Spanish authorities take further steps to ensure that the right of access to a lawyer is rendered fully effective in practice, taking into consideration these remarks.

25. The 2015 reform of the CCP (i.e. Article 520, paragraph 7), has also introduced the mandatory requirement to ensure that conversations between a criminal suspect and his/her legal counsel are confidential. The CPT's delegation was able to observe that such a provision was respected at most of the establishments it visited. That said, in some instances the delegation noted that such conversations were taking place in offices in the presence of police staff. **Steps should be taken to ensure that lawyers can always meet in private with their clients in police stations.**

¹⁴ For example, at Algeciras National Police Station, a Moroccan national detained at 00h00 on 30/5/20 was first brought before a judge at 16h29 on 01/06/20 (i.e. 40 hours and 29 minutes) – 898/20; a Colombian national detained at 08h20 on 31/05/20 was first brought before a judge at 08h20 on 02/06/20 (i.e. 48 hours) - 902/20; a Spanish national detained at 17h45 on 23/09/20 made a first declaration to the police at 12h20 on 24/09/20 (i.e. 18 hours and 35 minutes) - 1629/20. At Seville National Police Station, a Spanish national detained at 17h45 on 24/08/20 made a first declaration to the police at 09h22 on 26/08/20 (i.e. 39 hours and 37 minutes)– 3001/20.

¹⁵ In only one case (3067/20) out of the 93 recent custody records reviewed at Seville National Police Station was there a reference to a person receiving “legal assistance” during an “interview”, some five hours after his detention, and less than 90 minutes before his first appearance before a judge (detention at 13h10 on 28/08/20, legal assistance and interview with a lawyer, 18h28 on 28/08/20, appearance before a judge, 19h50 on 28/08/20).

e. access to a doctor

26. The provisions regulating access to a doctor were not changed in 2015. Article 520 (2) i of the CCP provides for the right of a detained person to be examined by a forensic doctor or any other doctor affiliated to the public administration.¹⁶ The findings of the 2020 visit showed that the practice was for police to call the SAMUR (emergency medical assistance) whenever a detained person presented with injuries or made a specific request to see a doctor upon admission to police custody.

That said, detained persons who requested medical assistance in the course of their detention had more difficulties as police officers were under the impression that such a request could only be made with a valid reason upon admission or alternatively should be initiated by the competent prosecutorial and judicial authorities.

In terms of the need to ensure the continuation of the provision of medication, Instruction 04/2018 stipulates that the provision of medication to detained persons in police custody be provided upon the presentation of a valid medical prescription. In the course of its interviews, the CPT's delegation met several detainees who alleged that their treatment (notably opioid agonist and anti-diabetic treatment) was not ensured as they could not prove the existence of a valid prescription. In such cases, the police should call a doctor or pharmacist to verify whether the person in question has a prescription by checking the health care database.

The CPT's delegation noted once again that medical examinations of detained persons performed at the police station or at civil hospitals were systematically taking place in the presence of police officers.

27. **The CPT recommends that the Spanish authorities in their implementation of the provisions of Article 520 (2) "i" of the CCP strictly comply with the following principles:**

- **a request by a detained person to see a doctor should always be granted; it is not for police officers, nor for any other authority, to filter such requests;**
- **all medical examinations of detained persons performed at a police establishment or civil hospital should be conducted out of the hearing and - unless the doctor concerned expressly requests otherwise in a given case - out of the sight of police staff. Further, any handcuffing of detainees during their medical examination should be based on an individual risk assessment;**
- **the continuation of the provision of necessary medication such as OAT and chronic use medication be ensured through the mandatory and proactive provision of the necessary prescription in contact with the competent health care prescribing authorities.**

28. Moreover, the CPT once again notes that the legislation does not guarantee a detained person's right of access to a doctor of their own choice. In the CPT's opinion, allowing detained persons to consult a doctor of their own choice is important for continuity of care and can provide an additional safeguard against ill-treatment. **The CPT reiterates its recommendation that such a right be introduced.**

¹⁶ Article 520 (6) also provides for an appointed lawyer to request a forensic medical examination of her/his client during the period of detention.

f. custody records and custody officer

29. Since April 2019, all law enforcement custody registers have been digitalised and officers from both the *Guardia Civil* and *Policía Nacional* have been trained on how to complete these records fully and accurately, as set out in Instruction 14/2018 of the Sub-Secretary of State for State Security.¹⁷ That said, the CPT's delegation found that not all records were diligently completed, for example, the signatures of police officers were missing on some of the provisions of fundamental safeguards forms seen by the delegation.

Further, at Algeciras and Seville National Police Stations, the time at which police officers had contacted the bar association (or a private lawyer), and the time at which a lawyer had been officially designated was never indicated in the custody register (i.e., in the *cadena de custodia e incidencias* of the *libro registro y ficha custodia de detenidos*). It was also extremely rare for police officers to record (in the *cadena de custodia e incidencias* of the *libro registro y ficha custodia de detenidos*) the presence of a lawyer on the premises of a police station. For example, at Algeciras National Police Station, this had been done in only three out of the 93 recent custody records examined. At both Algeciras and Seville Police Stations, the timing and details concerning contacts between (or on behalf of) detained persons and third parties were being recorded in a separate notebook rather than in the official custody records.

The CPT recommends that the Spanish authorities take action to ensure that, in future, the “chain of custody and incidents” (*cadena de custodia e incidencias*) section of the custody record (*libro registro y ficha custodia de detenidos*) will provide a complete and accurate account of all significant events that take place during a detainee's time in police custody. Particular care should be taken to record accurately the time at which a bar association or private lawyer is contacted, the time at which a named lawyer is officially designated and the time(s) that a lawyer actually attends the police station. All contacts between (or on behalf of) a detainee and other third parties should also be fully and accurately recorded in the chain of custody and incidents section of the custody record.

30. The Committee also considers that the existence of a “custody officer” (as distinct from an officer merely posted in the detention area), accountable for the well-being of detainees during the period of time spent under his custody, can greatly enhance the protection of detainees against ill-treatment and promote respect in practice for their fundamental rights.

In its 28th Annual Report the CPT stressed¹⁸ that introducing designated custody officers could also strengthen the practical implementation of various procedural and other safeguards against ill-treatment. While it remains incumbent on the apprehending officer(s) to inform detained persons of their rights, designated custody officers can double-check upon admission to the custody facility whether the detained person has actually been informed of all their rights, has understood and is able to exercise them. In this respect, **the CPT would like to receive further information about the possibility of the CCP being amended *inter alia* to create the role of “custody officer” in police detention areas.**

¹⁷ The new system was supposed to provide a more accurate scrutiny of the whole chain of custody as well as the monitoring of the exact provision of fundamental safeguards (such as the exact timing of the notification of a third party, the mandatory countersigning of the police officer in question, etc.).

¹⁸ See paragraph 85 of the 28th Annual Report of the CPT's Activities CPT/Inf (2019) 9.

g. conduct of interviews

31. In the course of the visit, the CPT's delegation observed several interviews of criminal suspects by the police in the presence of their lawyers (as well as of social workers and legal representatives in the case of detained juveniles)¹⁹. While the interviews were conducted in dedicated interview rooms, those rooms were not equipped with audio and video recording systems.

The CPT considers that the electronic recording of police interviews (with audio/video-recording equipment) is an effective means of preventing ill-treatment during police interviews whilst presenting significant advantages for the police officers involved. Electronic recordings should be kept securely for a reasonable period, be made available to the detained persons concerned, and/or their lawyers, and be accessible to representatives of international and national monitoring bodies (including NPMs), as well as to any officials responsible for investigating allegations or reports of police ill-treatment.

The CPT recommends that the Spanish authorities introduce electronic (i.e. audio and/or preferably video) recording of all police interviews.

4. Conditions of detention

32. The technical conditions regulating detention cells in law enforcement establishments are laid out in Instruction 11/2015 of the State Secretary for Security. It provides for the installation of call-bells, functioning air-extraction and ventilation system in cells, as well as an anti-vandal artificial lighting unit to be placed above the cell-door.²⁰ However, due to "security concerns" this Instruction does not provide for cells to have access to natural light.

The CPT has recommended in the past that all police stations in Spain should have access to natural light, adequate ventilation and access to an outdoor yard if persons are held for longer than 24 hours. While the CPT recognises that it might be structurally difficult to ensure that existing establishments conform to these requirements, it trusted that the Spanish authorities would include these requirements in the design of new police detention facilities.²¹ However, it appears that this is not the case to date.

¹⁹ Pursuant to the relevant provisions of the Instruction 01/2017 on the "Protocol of Police Conduct with a Juvenile".

²⁰ Instruction 11/2015 provides for cell doors to consist of vertical/ horizontal bars or of solid metal with hatches.

²¹ By letter received on 7 October 2020, the Spanish authorities informed the Committee that the Government of Spain had adopted a 600M Euros plan to upgrade the infrastructure of Guardia Civil and *Policía Nacional* establishments during the period 2019-2025.

33. All single and multi-occupancy cells in the police establishments visited during the 2020 visit²² measured between 6m² (single occupancy) to 24m² (multi-occupancy), and possessed concrete plinths, foam mattresses and blankets in compliance with the minimum standards laid out in the Instruction 11/2015. That said, there was no access to natural light and the artificial lighting was dim, providing insufficient light by which to read. Moreover, at the time of the CPT's visit several detained persons at Seville (Blas Infante) and Madrid (Hortaleza) Police Stations were left in the dark and were unable to communicate to staff their wish to have the in-cell lighting switched on.

Ventilation was poor in most of the establishments visited and, notably, at Seville (Blas Infante), Madrid (Centre), Valencia (Zapadores) Police Stations where it appeared that the air-extraction and ventilation system was malfunctioning.

Further, none of the cells at any of the establishments visited²³ possessed a call-bell or in-cell toilet and detained persons had to resort to shouting and/or door banging to attract the attention of custodial officers if they wanted to access the toilet or request medical assistance.

The overall state of repair and hygiene of cells was generally satisfactory apart from the detention areas at Madrid (Centre) and Seville (Blas Infante) Police Stations, which were in a poor state of repair and cleanliness.

34. The 19 cells in use for juveniles at G.R.U.M.E. Police Station in Madrid as well as the dedicated cells for minors at Seville (Blas Infante), Algeciras, Valencia (Zapadores) and Castellón Police Stations possessed an in-cell toilet separated from the concrete plinth by a metal grille.²⁴ The cells in question were in general in a good state of repair and hygiene. That said, they also lacked access to natural light, had poor ventilation and no call-bells. Further, none of the cells were covered by CCTV; in light of the serious allegations of ill-treatment in such cells and the vulnerability of children held in police custody, CCTV should be installed in cells designated for juveniles.

35. In terms of access to food and water, the CPT's delegation was able to ascertain that detained persons were regularly receiving three meals per day and access to tap water in compliance with Instruction 04/2018.

36. At Algeciras Police Station, there had been two suicides in the course of 2020 (on 23 January and 1 June) both of which were committed by using a blanket to hang themselves from the bars of their cell-door. At the time of its visit, the CPT's delegation noted that the two cells in question continued to be used but were still not covered by CCTV, nor did they have call-bells. Further, the establishment had no anti-rip clothes or blankets available or any specific procedures to manage vulnerable detainees.

²² I.e. 15 cells at Algeciras, 12 cells at Castellón, eight cells at Madrid (Hortaleza), seven cells at Madrid (Centre), 36 cells at Seville (Blas Infante) and 15 cells Valencia (Zapadores) Police Stations, and seven at Utrera Local Police Station. The overnight holding facility at Moratalaz in Madrid had 61 cells of 6-24m².

²³ With the exception of cells in use for the detention of persons under the incommunicado regime.

²⁴ See point 9.7 of Instruction 11/2015.

37. **The CPT reiterates its recommendation to the Spanish authorities to ensure that all new police custody facilities include in their design access to natural light as well as an outdoor yard for detained persons held longer than 24 hours.**

Further, **the CPT recommends that steps be taken in all detention facilities to ensure that the artificial lighting be of a sufficient brightness to enable detained persons to read, that the ventilation systems function effectively, and that all cells are equipped with a call bell. Measures should also be taken to keep the cells at Seville (Blas Infante) and Madrid (Centre) in a clean and decent state of repair.**

Urgent measures are required at Algeciras Police Station and other police establishments to ensure that cells do not possess ligature points. In addition, clear protocols, accompanied by relevant training, should be in place at every law enforcement detention facility on identifying and managing vulnerable prisoners at risk of self-harming or attempting to commit suicide. Such protocols should include the provision of rip-proof clothing and blankets and the installation of CCTV in cells and increased direct supervision.

As regards cells used for holding children, **the CPT recommends that they be equipped with CCTV as a safeguard against ill-treatment and as a complementary measure to monitoring their state of wellbeing while in custody.**

B. Prison establishments

1. Preliminary remarks

a. recent developments

38. The CPT notes positively that the number of prisoners in Spain has been decreasing steadily for the last 10 years. In 2011, the prison population stood at 73,157 inmates for an official capacity of 65,077 places, whereas by 2016 the population had fallen to 60,309²⁵ while the capacity had increased to 75,965. This downward trend has continued with the official prison population standing at 58,642 (including 8,379 in Catalonia) for an official capacity of 73,794 (64,237 in State Administration, 9,557 in Catalonia) as of February 2020.

The population has continued to fall during 2020, accelerated by measures taken to prevent the spread of COVID-19 in prisons and, as of 1 December 2020, the official prison population was 47,300 in State Administration prisons²⁶ (and 7,880 in Catalonia) – i.e. an occupancy level of 75% and a prison population rate of 117 per 100,000 inhabitants.

The CPT recalls that the decrease in the prison population is related to the targeted efforts invested in the increased use of non-custodial measures such as community sanctions and electronic surveillance, as well as legislative reforms which have reduced the duration of sentences for a number of criminal offences.²⁷ The number of foreign nationals has remained steady at 28% of the prison population since 2016.

In light of the reduction in the prison population, the CPT recommends that the Spanish authorities make every effort to limit local overcrowding and, notably, to ensure that the standard prisons (with 1,008 cells) have an occupancy level of one person per cell unless there are specific requests or reasons for a cell to be shared by two prisoners. When numbers on a module rise much above one person per cell the conditions of detention are impacted adversely.

39. The CPT was informed of various programmes approved to renovate the prison estate such as the upgrading of digital systems, the renovation of kitchen areas and sanitary facilities and the installation of new in-cell intercom systems to facilitate two-way communication with staff control centres. In addition, certain capital investment projects had been approved for the period up to 2026 such as the construction of a new prison in San Sebastian, replacing the current Martutene Prison, the comprehensive refurbishment of the El Dueso Prison (Santander) and the partial refurbishment of 53 prisons, in terms of security, health care facilities and accommodation.

²⁵ That is, a decrease in the prison population rate from 158 to 133 per 100,000 inhabitants between 2011 and 2016.

²⁶ The Spanish Secretariat General for Prison Institutions (SGIP) is responsible for 69 ordinary prisons, 33 centres for social reinsertion, 3 mother and baby units and two prison psychiatric hospitals.

²⁷ In particular, the 2009 amendments to the Criminal Code and Law on Road Safety which have reduced the sentences for charges related to drug trafficking.

Further, in the period since the 2016 periodic visit, a series of new prison instructions has been adopted, notably as concerns the recording of complaints of alleged ill-treatment by staff (Service Order 8/2016), injury reports to be drawn up by prisons and the regulation of the measure of regime mechanical fixation (Instructions 3/2018 and 4/2020).

40. The CPT notes that the Spanish authorities have a policy of attempting to allocate prisoners, as far as possible, to prisons close to their homes, in accordance with 2006 European Prison Rules (Rule 17.1). Nevertheless, in the course of the visit, the CPT's delegation met a considerable number of prisoners who were imprisoned a great distance from their homes. One category concerns challenging prisoners who are transferred from one prison to another around the country on a frequent basis.

A second category concerns the placement of prisoners affiliated to ETA (*Euskadi Ta Askatasuna*). These prisoners have generally been allocated to prisons a great distance from the Basque country. Many of them have been in prison for long periods and, for the most part, continue to be accommodated in the closed regime modules as first-degree prisoners under Article 91.2 of the 1996 Prison Regulations and subject to FIES 3 monitoring.²⁸ Their good behaviour in prison does not change their categorisation. In light of the announced dissolution of ETA in April 2018 and the abandonment of its armed campaign in 2011, there is a case for these prisoners to be located, based on an appropriate risk assessment, closer to their families whether that be in the Basque country or elsewhere in Spain.

The CPT would appreciate the comments of the Spanish authorities on the question of placement of prisoners affiliated to ETA, in the light of the above remarks.

b. impact of COVID-19 in prisons

41. The Spanish authorities acted as from the end of January 2020 to put in place a series of measures to prevent the spread of COVID-19 within prisons as communicated to the CPT by the Spanish authorities on 30 April 2020.²⁹ These included the following:

- Ending all leave and exits from prisons, including transfers, unless urgent;
- Increasing telephone calls, especially to lawyers;
- Introduction of video-conferencing (introduction of 200+ secure mobile phones);
- Only essential staff allowed to enter prisons;
- Closure of all external workshops and education programmes;
- Prisoners allowed to remain in cells during the day;
- Meals taken in shifts to reduce numbers in the dining halls;
- Prisoners provided with information on COVID-19 crisis – specific information “*Lectura Fácil*” provided to vulnerable groups such as prisoners with learning disabilities;
- Vulnerable prisoners and prisoners over 70 years of age were progressed to 3rd Degree and allowed to stay at home if deemed not at risk of re-offending; those not eligible for 3rd Degree were placed in separated accommodation wings;
- Disinfection carried out by Military Emergency Unit in all prisons.

²⁸ See footnote 57 below. FIES 3 monitoring entails *inter alia* having to move cell every three months.

²⁹ Overall, SGIP had managed to limit the infection rate within prisons to 25% of that experienced in the community (i.e. 1.08 cases per 1,000 prisoners).

As of 15 September 2020, Spanish prisons had recorded COVID-19 positive infections in some 240 prisoners and 400 members of prison staff.

42. In the course of the 2020 visit, the CPT's delegation had an opportunity to examine the impact of the measures taken to prevent the spread of COVID-19 in prisons and to exchange views with staff and prisoners on the effectiveness of such measures.

In all the prisons visited, there were standardised measures in place such as the quarantine of all new admissions into a prison for a 7-14-day period before being transferred to a mainstream accommodation module. Likewise, those prisoners who returned from leave would also be quarantined for a period of 7-14 days. Whenever a case of COVID-19 was discovered in an accommodation module, the whole module would be subjected to a 10-14-day confinement. Those persons confined would be allowed out of their cells every day to shower (if needed) and to access the telephone. However, they were not offered daily access to the outdoor exercise yard, contrary to the CPT's Statement of Principles.³⁰ Further, prisoners were not supplied with a sufficient quantity of masks and, of greater concern, the CPT's delegation received complaints that staff members did not always wear a mask when entering into contact with prisoners. This latter point is important given that staff are the most likely conduits of the virus into prisons. **These points should be properly addressed should the need arise again to impose periods of quarantine on prisoners due to the COVID-19 pandemic.**

That said, the Spanish authorities and prison staff should be congratulated on the measures taken to prevent the widespread propagation of the Sars-Cov-2 virus within prisons, and prisoners should be thanked for their understanding in putting up with even more restrictions during the pandemic. **The CPT would like to be provided with updated information on the effects of the COVID-19 pandemic in Spanish prisons up to 1 June 2021 for both staff and prisoners.**

c. prison establishments visited

43. In the course of the 2020 visit, the CPT's delegation visited Ávila Women's Prison (see section 3 below), Castellón II Prison, Madrid VII (Estremera) Prison and Sevilla II Prison. It also carried out targeted visits to Madrid V (Soto del Real) Prison, Sevilla I Prison and Valencia (Picassent) Prison in order *inter alia* to interview newly arrived prisoners.

Further, visits were carried out to the Prison Psychiatric Hospitals of Alicante and Sevilla (see section C below).

On this occasion, the CPT's delegation did not visit any prison establishments under the responsibility of the Department of Justice of the Autonomous Regional Government of Catalonia (*Generalitat de Catalunya*).³¹

³⁰ Principle 7 states, *inter alia*, that prisoners should have "the right of daily access to the open air (of at least one hour)." – see Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (Covid-19) pandemic issued by the CPT on 20 March 2020.

³¹ See [the report on the Committee's September 2018 visit to the autonomous community of Catalonia](#).

2. Prison establishments for men

44. In the last 20 years, Spain has promoted the construction of a standardised prison (*centros tipo*). These prisons are all located 40 kilometres or more outside the nearest large urban area in the open countryside. The prisons all include 14 self-contained modules with 72 cells each (every cell is designed to hold up to two persons), a separate isolation module (i.e. closed regime module or special department) and a socio-cultural centre (including a large sports hall and gym) at the centre of the establishment and, usually, a swimming pool and a football pitch. Each of the modules consists of two floors of cells with the ground floor taken up by a large open association area (including a coffee shop and a closed off dining area), with an adjoining outdoor yard, off which there was usually a small gym, a classroom and a workshop. A defining feature of these prison establishments is the tall surveillance tower which dominates the landscape.

The prisons of Castellón II, Madrid V (Soto del Real), Madrid VII (Estremera), and Sevilla II all conform to this model.

Castellón II Prison is located near the village of Albocàsser, some 60 kilometres (km) north and inland from the town of Castellón de la Plana. The prison opened in 2008 and at the time of the visit was accommodating 998 men. The prison has 12 ordinary modules (of which four were designated as *modulo de respeto*³²), a module for prisoners with mental disorders admitted to PAIEM,³³ two modules for prisoners diagnosed with substance use disorders known as UTE,³⁴ a module for persons classified as FIES 4,³⁵ a closed regime module, an infirmary and a small unit used for admissions. Due to the COVID-19 pandemic, one of the UTE modules had been turned into a unit for quarantining newly-arrived prisoners as well as those returning from home leave or those having had an intimate visit.

Madrid V (Soto del Real) Prison, located 40 km north of Madrid, was accommodating 1,105 prisoners, of whom 564 were on remand (including 10 women) and seven were serving a judicial security measure. The prison has 14 modules for accommodation of remand and sentenced prisoners, as well as an admission module, an infirmary and a closed regime module.

Madrid VII (Estremera) Prison is located 80 km south-east of Madrid near the village of Estremera. The prison was built in 2008 and at the time of the visit was accommodating 1,076 men and women. More specifically, there were 975 men and 101 women, of whom 89 in total were on remand and two were serving a judicial security measure. The prison has seven modules for sentenced male prisoners (three of which were “respect” modules), two modules for male remand prisoners, and two modules for women (one of which was a *modulo de respeto*). In addition, there was a UTE accommodating men and women, a module for prisoners with intellectual disabilities, a module for FIES 4 prisoners and a unit for a specific educational programme, as well as a closed regime module, an infirmary and a small unit used for admissions. Due to the COVID-19 pandemic, one module was used for quarantining persons returning from leave.

³² See section b.iii below for a description of the operation of these respect modules.

³³ PAIEM (*Programa de Atención Integral al Enfermo Mental*) is a care programme for inmates suffering from a mental disorder in prison.

³⁴ *La Unidad Terapéutica y Educativa*.

³⁵ FIES (*Fichero de Internos de Especial Seguimiento*) is a special registry category designed to exert control over prisoners perceived as more difficult to manage for the purpose of “guaranteeing the security and the good order of the establishment as well as the physical integrity of these inmates”. A sub-category, FIES 4, concerns prisoners who previously belonged to the security forces of the State.

Picassent (Antoni Asunción Hernández) Prison, Valencia, is located some 25 km south of the city centre. It is Spain's largest prison and consists of two prison complexes on the same site with one containing 13 modules and the other 23. On the day of the visit, it was accommodating 1,806 prisoners, including six who were serving a judicial security measure.

Sevilla II Prison, located 70 kilometres east of Sevilla in the Municipality of Morón de la Frontera, was inaugurated in 2011. The establishment accommodated 1,001 male prisoners of whom 30 were on remand and four were forensic psychiatric patients. The prison has 11 modules for sentenced male prisoners (four of which were *modulos de respetos*), a module accommodating PAIEM patients, three therapeutic modules (a UTE, a module for prisoners on methadone substitution therapy), and a module for older prisoners. In addition, there was a closed regime module, an infirmary and a small unit used for admissions. Due to the COVID-19 pandemic, one module was used for quarantining persons returning from leave.

a. ill-treatment

45. The majority of prisoners interviewed by the CPT's delegation in the course of the 2020 periodic visit did not allege any ill-treatment by staff. In each of the prison establishments visited, persons interviewed stated that there were prison officers who were supportive and correct in their behaviour. However, in all the prisons visited prisoners referred to a number of officers who would seek to provoke conflict or who would use any pretext to demonstrate their power over inmates, including through physical ill-treatment and verbal abuse. Further, nearly all the prisoners with whom the delegation spoke stated that making any sort of formal complaint against a prison officer would only worsen their situation.

46. The delegation received a large number of consistent and credible allegations of recent physical ill-treatment by staff, notably in those ordinary so-called "conflictual" modules which were considered to accommodate the more challenging prisoners and in the *closed regime* modules and *special departments*. Prisoners who committed acts of self-harm, some of whom had a mental illness, also alleged that they were ill-treated as a punishment for self-harming. In most instances, the alleged ill-treatment consisted of slaps to the head and upper body by officers wearing gloves. However, in each of the prisons visited, several much more serious allegations of punches, kicks and blows with batons were received. In a number of cases, the alleged ill-treatment was applied as an informal punishment following instances in which staff considered that prisoners had been disobedient (e.g. engaging in a verbal altercation, being late for lock-up or disturbing officers during lock-up) or after cases of inter-prisoner violence. A few of the allegations were supported by injuries observed by the delegation or noted down in medical records. However, the reporting and recording of injuries was, in general, totally ineffective in the prisons visited.

The alleged ill-treatment took place either in the ordinary modules, in a cell or at the entrance to the module (in a search room, the infirmary room or educator's office or in the short side-corridor, none of which was under CCTV), or in the closed regime module.

Further, allegations of verbal abuse consisting of insults of a racial, ethnic and religious nature were also frequent at all visited establishments and were raised in particular by foreign national, Roma (i.e. Gitanos) and Muslim prisoners.

The CPT wishes to highlight several cases of alleged ill-treatment which represent only a small sample of the allegations received. While some of the persons met by the delegation stated that they wanted to make a complaint about the ill-treatment,³⁶ others provided information on the condition that their names would not be divulged.

47. At *Castellón II Prison*, one-third of the more than 75 prisoners interviewed by the CPT's delegation alleged that they had been ill-treated, primarily with slaps but also punches, kicks and baton blows. Allegations were received from prisoners accommodated in Modules 2, 3, 5, 11, 12, 14 (PAIEM), 17 (closed regime) and 18 (infirmary). It is notable that all the prisoners interviewed who were either currently accommodated or had previously been accommodated in the closed regime module claimed that the prison officers working on this module were constantly provoking them, including by slapping them around the head or deliberately touching their penis when carrying out daily pat down/strip searches. A number of prisoners spoken to in the *modulos de respeto* claimed that they had witnessed instances of ill-treatment by staff while working in other modules.

- i. A prisoner (FA) stated that on 14 August 2020 he had an argument on his cell landing with a prison officer who allegedly grabbed his arm and led him downstairs to the entrance of Module 11. He was taken into the office next to the coffee shop (usually used for meetings with educators), and his hands were cuffed behind his back. Subsequently, several more prison officers arrived and they allegedly held him over the desk and delivered several kicks and punches to various parts of his body and subjected him to multiple truncheon blows to the soles of his feet (he claims that he had been wearing flip flops at the time and that they had already fallen off). The official records show that four minutes of *minimum force* was applied to immobilise the prisoner and prevent him from being aggressive after he had apparently kicked the metal detector at the entrance to the module and attempted to agitate other prisoners. He claims that when he was seen by the doctor, he was only asked a few questions through the open door with the prison officers still present, and that the doctor did not examine him even though the prisoner stated he had been beaten. He further claimed that he could only walk on his tiptoes for the following 5 days³⁷ and that he had bought tramadol on the black market to relieve the pain.
- ii. A prisoner (CdHP) held in the closed regime module stated that on 7 August 2020 the doctor had taken him off a specific medication (Rubifen³⁸) which he had been taking since he was a child. Consequently, he had used a piece of glass to self-harm which had resulted in some six prison officers entering his cell. Once he had been immobilised and his hands cuffed behind his back, he alleges that they started to kick and punch him causing him to fall to the ground. He states that he was lifted up by his handcuffs and, on the way to the room to be fixated to a bed, he was subjected to further punches. According to the documentation examined, when fixated his head was covered with a dry towel and he was injected with haloperidol and biperiden. The following morning he was examined by the doctor who recorded that “ new injuries are visible today” – *excoriation of the right elbow, bruises in the region of the left tibia, painful contusion of the first metatarsal phalange of his foot* – which, in the CPT's view, could hardly be deemed as compatible with regime mechanical fixation to a bed.

³⁶ In this respect, it is incumbent upon each person to lodge a complaint with the relevant authorities as providing the CPT with details of an allegation of ill-treatment does not constitute an official complaint. This was made clear to the persons met by the CPT's delegation during the visit.

³⁷ This specific claim was later corroborated by the prisoner with whom FA subsequently shared a cell for several weeks after he had been transferred to a different module following the above-mentioned incident.

³⁸ Rubifen is used to treat Attention Deficit Hyperactivity Disorder (ADHD).

48. At **Madrid VII (Estremera) Prison**, the delegation received a number of allegations of physical ill-treatment, including of women prisoners. The delegation also uncovered a very recent case which it immediately reported to the Director of the prison and which subsequently appeared in a newspaper article.³⁹

i. A prisoner (FUP) stated that on 9 September 2020 at 17h00, following a controversy with another inmate in the context of a cell change in Module 2, he was taken into the educator's office at the entrance to the module and ill-treated by four or five prison officers. They allegedly pushed him to the floor, cuffed his hands behind his back, knocked his head on the ground, stamped on his body with their shoes, and delivered multiple baton blows to his buttocks, to the back of his knees and to soles of his feet. The delegation found that the injuries sustained to this prisoner had not been recorded when he was placed in '*aislamiento provisional*'.⁴⁰ Further, the reports drawn up by the prison officers involved and by the chief officer on duty (*Jefe de Servicios*) did not accurately reflect the "minimum" use of force. None of the reports mentioned the use of force and notably the use of batons. Moreover, the prisoner provided a far more plausible account of events leading up to the alleged beating than that recorded in the prison staff statements. Upon examination by the delegation's doctor, FUP was found to have extensive bruising to his buttocks, the back of the knees, the sole of his left foot and around his ankles as well as bruising around his left eye where he had been punched. More specifically, the following injuries were noted:

- *bruise, mixed colours, purple bluish greenish, in the left gluteal region, measuring 20x15 cm; margins diffusely merged with the surrounding area;*
- *several purplish greenish linear bruises in the right gluteal region;*
- *parallel linear bruises in the lower part of the left posterior thigh region, greenish;*



- *bruise in the middle of the plantar arch of the left foot, dark purple, measuring 1.5x2 cm; painful on palpation;*
- *two abrasion wounds in the region of the left medial malleolus;*
- *bruise, dark purple, measuring 3x8 cm; below the left medial malleolus;*
- *swelling in the area of the left medial malleolus;*

³⁹ See, *inter alia*, « [El Consejo de Europa investiga las supuestas torturas a un preso en la cárcel de Estremera](#) », El País, 25 September 2020.

⁴⁰ The doctor who had visited FUP in the special department (Module 17) had only asked him through the bars of the inner cell door whether he had any injuries. FUP claimed he stated "I have been hit with truncheons". Three prison officers were present with the doctor. Twenty-four hours later, at the request of the Head of Security, he was examined again by a doctor in the presence of officers and some injuries were noted down which were described as "light".

- *bruise in the upper part of the left sural region, right below the left popliteal fossa, purplish bluish, measuring 12x10 cm; margins diffusely merged with the surrounding area;*
- *several parallel linear bruises, purple bluish in the region of left popliteal fossa (posterior of the knee);*
- *handcuff marks on both wrists; several excoriations were visible;*
- *the right knee was bandaged and was not examined.*



When the CPT's delegation brought this case to the attention of the Director on 17 September 2020, there was no indication that the prison management had initiated a proper investigation despite a formal complaint by the prisoner. However, later that day, the Director informed the Prosecutor (*Juzgado de Instrucción*) about the use of coercive measures and the "dysfunctioning of the intervening staff members".

By communication of 19 January 2021, the Spanish authorities informed the CPT that disciplinary proceedings had been opened against seven prison officers and that a criminal investigation is pending. **The CPT wishes to be informed about the outcome of these disciplinary proceeding and of the criminal investigation regarding this case.**

- ii. On 28 August 2020, after having recently been transferred to Module 6, prisoner CAPC said that he had received a message from some friends in Module 5. A little later, he had been called to the entrance of the Module where he was taken into an office by several prison officers and received four slaps to the head and a couple of kicks to his legs. He says that he admitted to having received two very small bits of hashish which allegedly resulted in him receiving further slaps to the head and kicks to his legs by the officers. He said that he was taken to the infirmary where he told the doctor what had happened, in the presence of the prison officers, but that the doctor had not visibly reacted.

This case is typical of the many allegations received from the ordinary regime modules visited (notably, Modules, 1, 2, 6 and 12), whereby prison officers physically chastised prisoners for breaking the rules, not complying with an order or speaking back to an officer.

49. At *Seville II Prison*, the delegation once again received many credible allegations of physical ill-treatment said to have been carried out either at the entrance to the module (in the infirmary room or educator's office or in the short corridor) or in the second search room at the entrance of the closed regime module (i.e. Module 13) which was, for obvious reasons, not covered by CCTV. The allegations were supported in a number of cases by the recording of injuries by prison doctors which were consistent with the statements made by the prisoner. It is striking, in this respect, that the coaxial wire connecting the only CCTV camera with a direct view of the door of that search room was found to have been roughly yanked from its socket in the CCTV server, ensuring that no images could be recorded of the comings and goings to that room of the staff of the closed regime module. It might also be noted, in this regard, that the camera server room had no lock, and was directly accessible via a staircase from a security observation area exclusively patrolled by the staff of module 13 (cf. also paragraph 54).

- i. A prisoner (JCH) alleged that on 24 April 2020 he had started shouting and banging against the window of his cell in Module 2 to protest at having another prisoner placed in the same cell with him. As a result of this, he claims that he was taken out of the cell, handcuffed and, while being escorted to Module 13, he was subjected to punches, slaps and blows with truncheons to various parts of his body by four prison officers. Upon placement in a temporary isolation cell he was examined by the doctor who recorded the following injuries: “*circular hematomas on both wrists, lineal hematoma on the left thigh a 1x1[cm] circular hematoma on the left frontal temporal region which are compatible with the allegation of beating*”.

This prisoner had suffered more extensive injuries after he was allegedly beaten with truncheons for 10 minutes by prison officers on 26 December 2019. In both cases the prisoner has submitted a complaint to the Supervisory Judge. Regrettably no proper investigation had been carried out to determine how the use of such prolonged “minimum” force on a slight, vulnerable prisoner of 1.68m in height could be justified.

- ii. A prisoner (TS) stated that on 22 January 2020 he had a verbal altercation with the group of six prison officers carrying out a cell search in Module 4. As a result, he was handcuffed and allegedly struck several times with a truncheon on his legs. Subsequently, he was transferred to Module 13 where he was taken into the search room at the entrance of the module by a group of officers in full protective riot equipment. One of the officers who was wearing a helmet allegedly head butted him a couple of times which damaged his front teeth. Upon placement in a temporary isolation cell he was examined by the prison doctor who recorded the following injuries: “*I notice that the superior incisive tooth (21) and superior arcade right molar tooth (14) are both eroded but I ignore their previous state. Full but painful extension of the right arm. Two linear (supposedly tramline) hematomas (10 x 1.5 cm) on the right hip and on the lateral side of the left thigh*”.
- iii. A prisoner (JSMD) stated that on 31 August 2020, he had an argument with another inmate who wanted to slap him, so he had started to yell. The prison officers intervened and transferred him to Module 13 where he was placed in a cell completely naked. Once in the cell, at around 17h30 he apparently asked for his missing pack of cigarettes whereupon the chief officer on duty (*Jefe de Servicios*) and six officers proceeded to beat him with batons. The official records show that five minutes of *minimum force* was applied. On 2 September, at 17h05 he was returned to Module 3 after first having been examined by a doctor. Although the doctor noted down having seen the injuries, the medical record does not describe them in any way or recount the allegations of ill-treatment made by the prisoner. According to the prisoner he had two large bruises on his legs and complained of severe pain in his spine.
- iv. A prisoner (ACA) stated that, at the beginning of April 2020, after he had shouted that he intended to kill himself, all of the prison officers on shift in Module 13 came to his cell, he was handcuffed behind his back and then punched and beaten with batons by a number of officers. He said that he had received baton blows all over his body, especially on his legs. Afterwards, he had been examined by a member of the health care team, to whom he had recounted the cause of his injuries. An official report of this incident by the Head of Services, dated 3 April 2020, records that it had been necessary for prison officers to use “physical force and rubber truncheons to overcome his resistance and to immobilise him with the aid of handcuffs”.⁴¹ According to the incident log, these means had been used for five minutes.⁴²

⁴¹ “*siendo necesario el uso de la fuerza física personal, defensas de goma para vencer su resistencia y conseguir inmovilizarlo con la ayuda de los grilletes de sujeción mecánica.*”

⁴² Incident report no. 17129 of 3 April 2020.

The injury report completed by a health care team member on his admission to an isolation cell in Module 13, twenty minutes after the alleged beating, records the following injuries: “Two linear contusions of about twenty centimetres on the upper part of the back. Light erosions in the right lumbar zone. Two linear contusions about fifteen centimetres long in the buttocks zone”.⁴³ Under the heading “opinion of compatibility”, the health care team member wrote: “Is compatible with the alleged facts”.⁴⁴

50. The findings of the CPT’s 2020 visit demonstrate that a pattern still exists of physical ill-treatment inflicted by prison officers as a disproportionate and punitive reaction to the recalcitrant behaviour of prisoners. The widespread nature of the allegations of ill-treatment in the prisons visited is of serious concern to the Committee. Such ill-treatment includes a number of allegations of *falaka* (*bastinado*), a well-known torture method. The allegations cannot be dismissed as either vexatious claims by prisoners or the result of the actions of one or two rogue officers but represents a deeper culture of abuse of power and impunity among certain prison officers working in these prisons.

The CPT is encouraged by the firm reaction of the Minister of the Interior and of the Secretary General of the Prison Administration to address the phenomenon of ill-treatment by prison staff, when they met with the visiting delegation at the end of the visit on 28 September 2020.

The CPT recommends that the Spanish authorities reiterate to custodial staff the clear message that physical ill-treatment, excessive use of force and verbal abuse of prisoners 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. Steps must be taken to ensure that documentation on the use of force is accurately completed. Allegations of ill-treatment as well as any other credible information indicative of ill-treatment should be immediately referred to the relevant duty court and be subject of an effective investigation.

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 (see also paragraph 113 below).

51. Following the 2016 periodic visit to Spain by the CPT, a new Instruction (*Orden de Servicio*) 08/16 was adopted by the Secretary General of Prison Institutions (SGIP) which *inter alia* provided for the establishment of a dedicated register on complaints of ill-treatment in each prison. It is however regrettable that the Instruction, after noting that complaints of ill-treatment have been progressively decreasing, states that “such complaints are residual, less frequent and normally archived as ungrounded”. This unfortunate wording downplays the importance of ensuring that there is an effective complaints system in place to investigate alleged acts of ill-treatment and undermines the otherwise good intentions promoted by the Instruction. **The CPT trusts that the Instruction will be re-issued with revised introductory wording.**

⁴³ “Dos contusiones lineales de unos veinte cms en zona superior central de la espalda. Erosiones leves en zona lumbar derecha. Dos contusiones lineales de unos quince cms de longitud en zona de glúteos”.

⁴⁴ “es compatible con los hechos alegados”.

52. As outlined above, the CPT's delegation received multiple allegations of ill-treatment of prisoners by prison officers in all the prisons it visited and nearly all of them involved a similar *modus operandi*. What is particularly worrying to the CPT is the apparent ineffectiveness of the safeguards in place to ensure that when incidents of ill-treatment and excessive use of force do occur that the prison staff responsible are held to account. CCTV systems were found to have critical deficiencies, the documentation drawn up by prison staff following an incident of use of force cannot be relied upon and prison doctors are not carrying out their functions in an independent manner when it comes to the recording and reporting of injuries. This latter point was raised by health care staff themselves (see paragraphs 86 and 87 below).

Such a state of affairs is compounded by the fact that the complaints made to the supervisory judge (*juez de vigilancia*) or to the duty court (*Juzgado de Guardia*) are only investigated based upon an examination of the available documentation.⁴⁵ There is no interviewing of the victim or of any potential witnesses.

53. At Castellón II Prison, a prisoner (IGP) said that he had lodged a complaint in a sealed envelope and sent it to the investigative judge (*juez de instrucción*) following an incident in his cell on 4 August 2020, when he had allegedly been punched, kicked and slapped by several prison officers. Three days later, he claimed that a prison officer on his module had waved the letter in his face and demanded that he withdraw the complaint unless he wanted to be beaten again. Such an incident serves to underscore the futility of making a "confidential" complaint and, at worst, points to a perceived collusion by the prison system to cover up any ill-treatment by staff.

At Seville II Prison, the delegation was able to follow up on nine of the 23 complaints made since January 2018 concerning ill-treatment. It found that no proper investigation was undertaken by the prison management to determine what had really happened. The documents forwarded to the Supervisory judge all contained an almost identical cover page stating that the allegations could not be sustained with evidence to prove their veracity. As the procedure is all in writing, the Supervisory judge merely rubber-stamps the conclusions provided by the prison.

The CPT recommends that the Spanish authorities ensure that investigations into alleged ill-treatment by prison officers of prisoners be carried out effectively. To this end, supervisory judges or investigators should carry out their own fact finding, including interviewing the victim, witness and the alleged perpetrators.

54. The CPT wishes to emphasise that properly functioning CCTV systems offer a valuable additional safeguard against ill-treatment, as well as providing protection to prison officers against any unfounded allegations of ill-treatment. The systems in place should provide comprehensive video coverage of all areas outside of the cells, including corridors, exercise yards and the entrances to any other rooms in which prisoners may be placed for whatever reason. The goal should be to enable all interactions between prison staff and prisoners outside of their cells to be video recorded. The footage recorded by those cameras should be securely retained for a period of at least one month (and preferably longer) and accessible only to senior managers and those staff members whom they have specifically authorised to view it.

⁴⁵ In theory the supervisory judge has already received and controlled all documentation relating to the use of means of restraint although the CPT has serious doubts over the effectiveness of such oversight.

Regrettably, this was not the case in all of the establishments visited. Reference has already been made (cf. paragraph 49) to the severed cable from the camera orientated towards the entrance to a room in which ill-treatment allegedly took place in Module 13 at Seville II Prison. The delegation also found that a number of the other 70 cameras installed in that Module had not been operational since at least June 2020, apparently due to a server defect. Whether by accident or design, the cameras that had been inoperative included all of those covering the last part of the main corridor area leading to the same room. The CPT is however encouraged by the communication of 19 January 2021 in which the SGIP announced that they intended to extend the coverage of CCTV cameras in all prisons and ensure that they are properly used and not susceptible to being manipulated.

The CPT recommends that the CCTV systems in all prisons in Spain be rendered fully operational as a safeguard against ill-treatment, taking into account the requirements set out in this paragraph.

55. The CPT has also consistently highlighted 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.

The system of recording and reporting of injuries on inmates observed at admission or during their detention is regulated *inter alia* by Instruction 14/1999 of the SGIP which provides that injury reports (*parte de asistencia de lesiones*) be drawn up in four copies to be forwarded to the director, judge (*Juzgado de Guardia*), the inmate in question and placed in his/her personal medical file. Further, the provisions of Article 262 of the Code of Criminal Procedure require a doctor to report to the competent judicial authority any information on a criminal offence that comes to their knowledge in the exercise of their profession. However, in practice, the CPT has found during its previous visits and once again during the 2020 visit that injuries sustained by prisoners either prior to entry to prison or during their imprisonment are not always recorded. Further, when the injuries are recorded, they are usually described in a cursory manner and no reference is made to the circumstances in which the injuries might have occurred.

56. This is disappointing as the Spanish authorities had taken into account the recommendations previously put forward by the CPT and the Spanish Ombudsman/NPM⁴⁶ to revise the injury form. The injury report is now a part of the electronic medical file and can only be printed if all the requisite parts are completed, namely:

- the prisoner's description of how the injuries were sustained;
- objective medical findings;
- injury scale (i.e. light, moderate, serious, very serious);
- compatibility between the statement made and the objective medical findings;
- immediate and proposed treatment.

⁴⁶ See 2014 Study of Injury reports on people deprived of their liberty by the *Defensor del Pueblo*.

Whenever injuries on prisoners were documented, a copy would be forwarded to the chief officer on duty (*Jefe de Servicios*) and thereafter sent to the supervisory judge. However, given the poor recording of injuries and lack of reference as to how the injuries were sustained, they often served little purpose. All too often the report did not contain the prisoner's statement but recounted what the prison officers said as "guards said he fell down in shower" or "guards had to overpower him as he was aggressive towards them" or "he injured himself due to regimental restraint". Further, the examination of prisoners nearly always took place in the presence of prison officers (see also paragraph 96 below).

57. For example, in the case in paragraph 48.i above, the doctor examined the prisoner at 18h50 on 9 September in the presence of prison officers and the injury form contained the following entries:

Statement: he has participated in the regime incident.
Objective findings: *Flexion and extension of his knees is conserved; pain in the region of the right knee; light hyperaemia in both wrists with no excoriation. Eutimico,⁴⁷ light injuries, compatible, painkillers prescribed.*

Twenty-four hours later, the prisoner requested to see a doctor again as he was in pain and this time the injuries were described as:

Objective findings: *Haematomas on the back of left thigh, on the side of the left foot, soles of the left and right feet and both buttocks; erosions on both wrists. The injuries were described as light.*

The lack of any statement from the prisoner describing how he sustained the injuries and the cursory recording of the injuries mean that any investigation into this case of alleged ill-treatment by prison officers would be severely hindered. Regrettably, this was but one example of many found in all the prisons visited. While recognising the time pressures on health care staff, enhancing the training provided to doctors and nurses on how to accurately record and describe injuries would be beneficial, as would equipping health care services with a digital camera to photograph any marks and injuries visible on prisoners.

The CPT reiterates its recommendation that the Spanish authorities ensure that all prison health care personnel are aware of their obligation to record and report allegations of ill-treatment they receive and are provided with the requisite training to do so. Further, the CPT repeats that it would be desirable for photographs to be taken of the injuries, and for the photographs to be placed in the prisoner's medical file. In addition, for oversight purposes it should be made possible to retrieve disaggregated data on injuries sustained by prisoners in a particular establishment.

⁴⁷ Euthymia here signifies that the prisoner showed a normal, tranquil mental state or mood.

58. Likewise, newly admitted prisoners who presented with injuries were not properly examined. This was because prisoners who had sustained injuries upon apprehension and detention by the police had usually been examined at a hospital prior to their admission to prison. Such injury reports would be scanned, saved in the medical files and a copy sent to the supervisory judge. It should be recalled that the purpose of the police in transporting apprehended persons to hospital was to have their injuries treated and that such treatment took place in the Emergency Department (*Servicio de urgencias*) where the priority was to treat the person and move on to the next patient. Such departments cannot be expected to draw up a report along the lines of the Istanbul Protocol as outlined above. Further, police officers are always present during such examinations.

For these reasons, the CPT recommends that all persons entering prison with injuries should have those injuries properly documented and recorded. The results of every examination, including the prisoner's statement and the doctor's observations, should be made available to the prisoner and, upon request, to his/her lawyer.

Further, the existing procedures should be reviewed in order to ensure that whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a prisoner (or which, even in the absence of allegations, are indicative of ill-treatment), the report is immediately and systematically brought to the attention of the relevant prosecutor, 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 Court is not a substitute for the lodging of a complaint in a proper form. 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.

59. It is incumbent on the Spanish authorities to ensure that prison officials who order, authorise, condone or perpetrate ill-treatment are brought to justice for their acts or omissions, as it delivers an unequivocal message that such conduct will not be tolerated. This requires ensuring that investigations into such alleged acts are effective.

For effective investigations to be carried out into alleged cases of ill-treatment of prisoners by staff, it is essential for the documentation to be fully and accurately recorded and for health care staff to record injuries as outlined above. Moreover, the judicial authorities and police must investigate cases of alleged ill-treatment themselves and not rely upon prison documentation which, from the findings of the 2020 visit, cannot be considered to be always reliable.

The Spanish authorities informed the CPT that between 1 January 2017 to 30 June 2020 there had been 501 allegations of ill-treatment and abuse of prisoners by prison staff that had resulted in 62 cases being opened by the judicial authorities and seven convictions. In the same three-and-a-half-year period there had been only 32 disciplinary proceedings against staff for cases of alleged ill-treatment of prisoners with 21 proceedings still ongoing, five cases closed and six cases resulting in a disciplinary sanction.

The CPT would like to be informed of the exact procedures for the investigation of any case of alleged ill-treatment of a prisoner by a prison officer once it is brought to the attention of the supervisory judge or duty court, in particular regarding which body is responsible for carrying out the investigative acts. Further, it would like to receive information on the seven judicial convictions (including sentences imposed) and six disciplinary cases (facts of cases and penalties imposed).

60. Concerning the issue of inter-prisoner violence, the delegation found that such violence was a feature in certain modules, but that staff were usually responsive to any incident and few cases resulted in serious injuries. That said, the delegation did receive a number of allegations of abuse by prisoners placed in a position of authority over other prisoners – the orderlies – notably those working in the infirmary and the modules for prisoners with mental disorders or learning disabilities.

For example, at the PAIEM (Module 14) at Castellón II Prison, several patients told the CPT’s delegation in separate interviews that the orderlies “hit and shout at us”. Further, the patients added that their access to the doctors was controlled by the orderlies and that the orderlies were responsible for the distribution of psychotropic medication, which was a source of great stress for the patients given the militaristic manner by which it was done (see also paragraph 100 below).

The prisoners and patients placed in the infirmaries and the modules accommodating persons with mental disorders or learning disabilities are particularly vulnerable, and they require appropriate carer-support from persons who are not only well trained but also possess the necessary personal qualities. While it is positive to train and entrust prisoners with carer responsibilities, attention must be paid to ensuring that they do not abuse their positions. They should in no instance be permitted to “punish” other prisoners and should always be the object of close supervision by trained professionals.

The CPT recommends that the prison management in the establishments visited, as well as in all other prisons in Spain, ensure that orderlies are not only carefully selected and properly trained but also adequately supervised by staff to ensure that they do not abuse their positions. Further, orderlies should not carry out nursing tasks such as the distribution of medication or screening requests to consult a doctor. The CPT wishes to be informed of the steps taken to this address these concerns.

61. In the course of the visit, the CPT’s delegation received many concordant accounts from prisoners concerning strip searches. Prisoners stated that whenever they were strip searched after an alleged incident or suspicion from prison officers, they would have to take all their clothes off at once and, while naked, squat down and cough. The CPT considers that prisoners who are searched should not normally be required to remove all their clothes at the same time, e.g. a person should be allowed to remove clothing above the waist and get dressed again before removing further clothing. Further, the Committee recalls that the resort to strip searches should be based on an individual risk assessment and subject to rigorous criteria and supervision and should be carried out in a manner respectful of human dignity, as is laid down in Article 68 of the 1996 Prison Regulations. **The CPT recommends that every time a strip search is deemed necessary that it be carried out in a manner so as to limit embarrassment and preserve the dignity of the person, as described above.**

b. conditions of detention in ordinary regime

62. The CPT notes that Articles 100 to 109 of the Prison Regulations (RD 190/1996) set out the three categories of regime into which a prisoner may be placed: closed regime (1st degree), ordinary regime (2nd degree) and open regime (3rd degree). In practice, the vast majority of prisoners (59% or 27,845⁴⁸ as of December 2020) entering the prison system will be categorised as 2nd degree inmates after having spent a few days in the admission unit of a prison.

⁴⁸ In addition, the vast majority of the 7,234 pre-trial prisoners were also treated as 2nd degree.

A limited number of sentenced prisoners (circa. 1.5% or 692 as of December 2020) are classified as 1st degree inmates upon admission to prison and placed in a closed regime or special department (see section 2.c below). Progression to third degree (*régimen abierto*) usually resulted in an inmate being placed in an open regime unit or centre (14% or 6,583 in December 2020).⁴⁹

The classification process of an inmate is based upon a proposal by the prison treatment board (*Junta de Tratamiento*) and endorsed by the SGIP. The classification is reviewed every six months and the relevant decisions can be appealed before the supervisory judge.

i. material conditions

63. The ordinary detention regime modules at Castellón II, Madrid VII (Estremera) and Sevilla II Prisons shared the same architectural design, each containing 72 cells, and were in general suitably equipped and in an acceptable state of repair and good hygienic conditions (in particular the *modulos de respeto* – “respect” modules). All modules possessed a yard for outdoor activities, a medical room, a classroom, a canteen, a large association area, communal toilets and workshops. It was positive that prisoners took their meals in a common dining room together.

That said, in some modules in all three of these prison establishments, the communal areas were showing signs of wear and tear and were certainly in need of refurbishment. The small gyms located in each module were particularly makeshift and dilapidated, notably at Madrid VII (Estremera) Prison. This situation was exacerbated by the fact that the ordinary modules which accommodated so-called “conflictual” prisoners tended to be more crowded than the “respect” modules and, due to the COVID-19 restrictions in place since February 2020, the prisoners had been confined to their modules thus placing more strain on the limited facilities.

The CPT again noted that the communal areas of the modules of all prisons visited lacked individual lockable cupboards in which inmates could store their belongings (i.e. books, documents, etc.) during the more than 10-hour compulsory out-of-cell time when the cells are locked.

The standard cell in all the prison establishments visited measured some 10m² and was equipped with a bunk bed, shelving unit, table and chair, intercom system and a sanitary annexe including a toilet, shower and washbasin which was separated from the rest of the cell. Access to natural light and ventilation were satisfactory. On the whole, the cells in all the prison establishments visited provided good conditions especially when used as single-occupancy accommodation. The CPT recognises that the costs of installing a full partition of the in-cell sanitary annexe would be very expensive and hence it considers that placing two persons in a cell should be avoided except where it is considered to be in the best interests of the persons concerned.⁵⁰

The CPT reiterates its recommendation that the cells for ordinary regime detention in the “standard” prisons such as Castellón II, Madrid VII (Estremera) and Sevilla II Prisons only be used for single occupancy as long as the sanitary annexe has not been fully partitioned. Further, it recommends that steps be taken to maintain and upgrade the common areas of the modules, and that personal locking space be provided to prisoners in communal areas to store their belongings during the day.

⁴⁹ There were also 3,815 “unclassified” prisoners who were in practice treated as either 2nd or 3rd degree – see Article 100.2 of the 1996 Prison Regulations.

⁵⁰ Note that Article 19.1 of the Prison Law of 1979 (*Ley Orgánica 1/1979, de 26 de septiembre, General Penitenciaria*) states: “All prisoners will be accommodated in individual cells”.

ii. *regime*

64. Prisoners who were classified as 2nd degree and following an ordinary regime spent most of the day (i.e. from 7h45 to 14h30 and from 16h30 to 20h45) outside their cells, either in the common areas of their respective modules or engaged in an organised activity. During the day the cells are locked, and prisoners are not allowed access to them, apart from during the post-lunch *siesta* period when they are confined to their cells. Offering such an extensive period of the day out-of-cell and in association with other prisoners can be considered good practice. The challenge is to offer prisoners a range of purposeful activities and relevant programmes during this unlock period which can support them in preparing for their return to the community.

65. As mentioned above, each “standard” prison possesses a socio-cultural centre which contains a theatre, a library, various classrooms, a sports centre (consisting of a large gym and a multi-function sports hall). Each of the prisons visited also possessed a swimming pool and a football pitch.

In theory, the socio-cultural centre is a hive of activity with prisoners from all modules attending but especially those from the *modulos de respeto*. Further, several sports activities would involve prisoners from different modules mixing together.

However, at the time of the visit, the restrictions in place to limit the spread of COVID-19 meant that the number of activities offered to prisoners had been reduced dramatically. Activities were conducted almost exclusively within each module and every effort was made to avoid prisoners from different modules mixing together. For example, at Castellón II Prison, the number of activities within the polyvalent Sports Centre had been reduced significantly with only the *modulo de respeto* 9 for sports continuing to have access to the fitness and weights room and daily sports activities. Other modules were offered one session a week for around 20 prisoners on the outdoor football pitch or in the multi-purpose sports hall. At Madrid VII Prison, only 42 prisoners were registered for three separate full-time workshops (bakery and masonry) and, other than those employed in the kitchen and working as orderlies, less than 5% of the prison population were enrolled in various programmes which ran for a period of a few hours once a week.

66. Consequently, prisoners spent their time within their own module, in the association area on the ground floor of each module, which was equipped with tables and chairs, a television and a coffee shop, or in the adjoining outdoor exercise yard, to which they had free access. The activities block in each module, located on the other side of the exercise yard, included a classroom, a vocational workshop (hairdressing, carpentry, etc.) a library and a gym. The small weights gym in the modules visited were mostly dilapidated and contained makeshift or broken equipment.

The CPT recommends that increased efforts be made to improve the range of activities available to prisons within their modules and to upgrade the small fitness gyms.

Further, the CPT would like to be informed of the actual number of prisoners who were engaged in work, education, vocational, socio-cultural activities and sport for the month of June 2021 at Castellón II, Madrid V, Madrid VII and Sevilla II Prisons.

67. Every sentenced prisoner should have an individual treatment plan or PIT (*Programa Individualizado de Tratamiento*) which is drawn up by the treatment team (educator, social worker and psychologist) and reviewed every six months at the same time as the classification reviews. However, in the course of the visit, most prisoners were unable to inform the CPT's delegation about their own PIT and those that were aware of the PIT stated that they had no input into it, not even when it was evaluated and revised.

An examination of a number of PITs revealed that they were focused more on an assessment of behaviour in the past and did not spell out what activities or action the prisoner should be undertaking in the future. Further, the PIT was not drawn up in consultation with the prisoner to ensure that it set out a pathway to which the prisoner was committed nor were the six-monthly reviews carried out with input from the prisoner. The result was that the prisoners did not have a genuine sentence plan providing a structure upon which they could work and develop.

In order to ensure that the PIT addresses the needs of the prisoner, **the CPT recommends that the elaboration and review of the PIT be carried out with input from the prisoner and that the PIT be more oriented towards specific activities which will assist the prisoner in preparing for reintegration into the community.**

iii. *modulos de respeto* ("respect" modules)

68. *Modulos de respeto* were introduced in Spanish prisons in 2006. They are units intended for prisoners who are engaging in prison life, do not have any disciplinary sanctions in the previous six months and who are willing to abide by a set of rules. In exchange for signing a contract (under which a prisoner commits to maintain his/her personal hygiene, the hygiene of the cell and good inter-personal relations with staff and inmates, as well as to participate in daily and weekly activities), prisoners are afforded a degree of self-management with less staff supervision and the possibility of gaining easier access to permits and benefits.

Certain of the *modulos de respeto* in the prisons visited had a specific focus: for example, at Castellón II Prison, Module 4 was for education and Module 9 was for sports.⁵¹ Module 4 accommodated 49 prisoners at the time of the visit. The regime consisted primarily of education classes of one and a half hours each weekday morning, ranging from primary school to Open University, and in the afternoon prisoners were offered classes on yoga, meditation, language, etc., depending on the skill sets available among the prisoners within the module. In addition, the prisoners were organised into six cleaning teams which were active each day. The day-to-day running of the module was undertaken by a prisoner who was responsible for helping new persons settle into the module and to understand the rules as well as to talk to those who were not following the rules. He also led the conflict resolution committee to mediate any problems with prisoners that arose. Every week an assembly of all the prisoners attended by the social worker and educator would take place to discuss the running of the module and any problems that arose. Although prisoners did not have an individualised programme, they were able to sign up to general courses such as pottery, upholstery and bakery, in addition to their daily classes and work. Persons could also go to the Sports Centre twice a week although this had been suspended since the outbreak of the COVID-19 pandemic. The educator, social worker and psychologist responsible for the module would evaluate the prisoners' behaviour through a points system, with the reward being extra visits or leave.

⁵¹. The other three respect modules were: Module 10 for workers and Modules 5 and 7, the former for those prisoners requiring the least supervision.

The CPT's delegation gained a generally positive impression of the *modulos de respeto* it visited: cells and communal spaces were in a good state of repair and hygiene, facilities were well decorated and personalised, and prisoners were offered a range of purposeful activities.

69. Nevertheless, the delegation did receive a number of complaints regarding Module 7 of Madrid VII (Estremera) Prison where the atmosphere was less relaxed than in the other *modulos de respeto* visited. Prisoners complained about the over-controlling and bullying behaviour of the prisoners entrusted with supervisory functions, including slapping prisoners if they did not perform their cleaning duties to their satisfaction. Complaints were also heard of some staff members acting in a discriminatory manner towards Muslim prisoners, questioning why they had the Koran and wanted to observe Ramadan. Interestingly, in both this module and others in the different prisons visited, prisoners made it clear that there was no point in complaining officially as it would not result in any change and would probably lead them to having to leave the *modulo de respeto*.

The CPT recommends that the Spanish authorities ensure that staff maintain a clear oversight of prisoners in *modulos de respeto* and do not allow prisoners to “discipline” other prisoners. Further, prison management at Madrid VII (Estremera) Prison and in other prisons should be more proactive in visiting the *modulos de respeto* to reassure prisoners that making a complaint will not have an adverse effect on their stay in the module.

It should also be made clear to all staff that the religious beliefs of prisoners should be respected and that prisoners must not be treated in a demeaning manner due to their religion, notably as regards their right to prayer, fasting and pastoral care.

c. conditions of detention in closed regime modules and special departments

70. In the course of the 2020 visit, the CPT examined once again the situation of those sentenced and remand⁵² prisoners who are classified as 1st degree upon their admission to prison or during their imprisonment based upon their criminal profile or inadaptability to an ordinary prison regime. First-degree prisoners are placed under a closed regime (*regimen cerrado*) in closed-regime modules or special departments of ordinary prisons.⁵³ At the time of the visit, the number of prisoners classified as 1st degree remained around 800 or roughly 2% of the prison population.

The decision to classify an inmate or remand prisoner as 1st degree is taken by the SGIP upon the proposal of the treatment board (*junta de tratamiento*) and is subject to a quarterly review. The decision on classification can be appealed to a supervisory judge. Further, there is no limit to the duration of the 1st degree classification although Instruction 9/2007 of the SGIP stresses the characteristics of exceptionality, temporary nature and subsidiarity of the closed regime.

⁵² Remand prisoners may be placed under a closed regime on the basis of the specific nature of the crime with which they are charged, notably for belonging to an armed organisation pursuant to Article 10 of the Organic Law.

⁵³ Closed-regime modules generally accommodate inmates classified under Article 91, paragraph 2, of the 1996 Prison Regulations in light of their inadaptability to an ordinary regime. Special departments usually accommodate inmates considered as extremely dangerous and classified under Article 91, paragraph 3 of the Prison Regulation. Further, closed-regime modules may also accommodate prisoners subjected to a disciplinary sanction (Articles 243 and 254 of the Prison Rules), to temporary isolation (Article 72.1), to a measure of security and good order due to the personal attitude of the prisoner (Article 75.1) or to a measure of protection from other prisoners or from self-harm (Article 75.2).

In light of their profile, 1st degree inmates are further sub-categorised according to Article 91, paragraph 2, (i.e. in light of their inadaptability to ordinary regime) or paragraph 3 (i.e. for having caused serious disturbances of the regime such as physical aggression against staff or other prisoners) of the 1996 Prison Regulations (RD190/1996).⁵⁴

71. The CPT's delegation had the opportunity to assess the conditions of detention of 1st degree prisoners accommodated in the closed regime modules and special departments at Castellón II (Module 17), Madrid V (Module 15), Madrid VII (Module 19) and Sevilla II (Module 13) Prisons.⁵⁵

The closed regime modules and special departments at these prisons possessed the same design and layout, consisting of five wings of 14 cells (each with a short and a long gallery) and two cells for the purpose of mechanical fixation of inmates.

Each cell measured some 10m², was suitably equipped with a metal bed with mattress, built-in concrete table and shelving unit, one chair and a semi-partitioned sanitary annexe (including a metal washbasin, toilet and shower); access to natural light was adequate and ventilation satisfactory. Each gallery also possessed an association room furnished with tables and chairs, and containing magazines, books and board games. Further, each module included a small gym (equipped with exercise equipment such as abdominal bars and exercise bikes), a classroom and several consultation rooms. The five concrete exercise yards of various sizes each linked to the gallery were equipped with toilets and were surrounded by a five-metre high concrete wall and, at Seville II Prison, still covered with a metal grille. Further, not all yards were equipped with a means of rest and few had any visual stimuli in terms of colour, decoration and vegetation. There was also a total absence of any horizontal view beyond the 10-metre length of the yards.

The CPT recommends that all the concrete exercise yards in closed regime and special department modules be equipped with a means of rest and provided with some visual stimuli. Further, the metal grilles covering the courtyard should be removed.

72. The regime on offer to prisoners placed in closed regime (i.e. those under Article 91.2) and in special departments (i.e. those under Article 91.3) is regulated by Articles 93 and 94 of the 1996 Prison Regulations, notably as concerns the amount of time for outdoor exercise, association and programmed activities. Under Article 93, special department prisoners are offered a minimum of three hours of outdoor exercise in groups of no more than two prisoners while under Article 94, closed regime prisoners are offered a minimum of four hours of association every day in groups of up to five prisoners. Both groups may have an additional three hours for scheduled activities.

In particular, the Treatment Board should draw up a detailed programme of various cultural, sporting, recreational, training, work and occupational activities with the aim of assisting prisoners reintegrate into the ordinary prison regime.⁵⁶

⁵⁴ Article 91, paragraphs 2 and 3 of the Prison Regulation reads as follows: "2. Inmates classified under first degree who show a manifest incompatibility with the ordinary regime will be accommodated in closed regime centres or modules; 3. Inmates classified as first degree who have been protagonists or inducers of serious perturbations of the prison regime which have put in danger the life or integrity of prison staff, authorities, other persons or inmates, both inside and outside the prison establishment and who show an extreme dangerousness will be assigned to a special department."

⁵⁵ These modules were accommodating, respectively, 32, 31, 31 and 51 prisoners.

⁵⁶ See Article 93, paragraph 6, and Article 94, paragraph 3, of the 1996 Prison Regulations.

73. The overall findings of the CPT's delegation were that prisoners placed in a closed regime module were not offered an adequate range of activities or sufficiently supported to assist them in integrating into an ordinary regime module.

For example, at Module 13 of Seville II Prison, the CPT's delegation found that prisoners were offered access to a gym once a week for one hour and that members of the technical team were present in the module each working day.⁵⁷ However, the courses offered were basic and communication was hindered by the fact that the staff (including the social worker and psychologist) interacted with the prisoners through metal bars which separated the classroom from the room in which the staff member was seated. Further, only one prisoner was enrolled in the individualised "Intervention Programme", which was intended to assist prisoners to reintegrate into an ordinary regime module. Figures for the second semester of 2020 showed that only 9 of 39 prisoners in the closed regime module participated in a programme of activities (education, sport, therapy, occupational, cultural). The 2019 annual report for this module listed 14 of 84 prisoners (52 of whom were under Article 91.2) as having participated in a programme of activities. Such low numbers cannot be dismissed as a lack of interest on the part of the prisoners in the module but rather one linked to resources and organisation of the regime.

At Castellón II and Madrid VII Prisons, it appeared that hardly any activities were offered to prisoners held in the closed module and special departments. Indeed, at Module 17 of Castellón II Prison, only seven out of 32 prisoners were offered any activities (and only one attended the gym and a painting workshop) and all of them stated that they only saw the psychologist when a review had to be conducted and that they rarely saw a social worker or educator. At Madrid VII Prison, outside of the daily outdoor exercise periods, none of the prisoners met were engaged in any meaningful activities and while some sports activities were programmed, they did not take place as there was no equipment in place.

74. The CPT did meet a number of prisoners who had progressed from the closed regime module (1st degree) directly to a *modulo de respeto*. Yet, even these prisoners were critical of the opportunities provided in the closed regime modules and of the provocative behaviour of certain prison officers. The CPT considers that more needs to be done to promote the progressive reintegration of 1st degree prisoners back into the ordinary regime by enhancing the multi-disciplinary teams⁵⁸ and ensuring individual treatment plans relate specifically to the prisoner in question. Once again, the CPT's delegation found that violence was prevalent in the closed regime and special department modules examined in the course of the 2020 visit and it appeared that insufficient efforts were being invested to develop a good internal atmosphere with positive relations between staff and prisoners. This is in the interests not only of the humane treatment of the module's occupants but also of the maintenance of effective control and security and of staff safety. The CPT acknowledges that many of the prisoners held in the closed regime modules suffer from a mental illness and/or a personality disorder which complicates their management by staff, especially given the very restrictive regime and physical layout of the modules.

⁵⁷ I.e. a teacher on Mondays to Thursdays, an educator on Mondays, a sports instructor on Wednesdays, a social worker on Thursdays and a psychologist on Fridays.

⁵⁸ The team should be composed of one member of the security staff, plus a psychologist, jurist, educator, social worker, teacher, nurse, sports monitor and occupational monitor.

75. In their communication to the CPT of 19 January 2021, the SGIP referred to the need to improve the effective reintegration of these prisoners into an ordinary regime and the need to encourage staff to provide a tutoring role alongside a range of activities. The CPT supports such an approach.

To this end, **the CPT recommends that the Spanish authorities build on the provisions of Instruction 12/2011 by allocating to each closed regime and special department module a full-time dedicated multi-disciplinary team composed of educators, psychologists and social worker. The team should develop more detailed individual treatment plans for each prisoner and should increase their direct interaction with them through motivational interviews. There should also be an increased engagement by a sports instructor.**

In addition, the CPT reiterates its recommendation that all formal interactions in consultation rooms and classrooms between staff and prisoners in the closed regime and special departments be conducted directly and not through metal bars or screens. Where concerns for safety exist, it would be preferable for an additional member of staff to be present in the consultation room. In this context, staff were not able to explain how the alleged “dangerousness” of a prisoner manifested itself and there was no detailed risk assessment on file or any plan of how the risk factors are addressed in order to reduce them to enable the prisoner to progress to a more normal life again. **Steps should be taken to ensure that such a risk assessment, together with a plan for addressing the risk factors, exists for prisoners deemed to be dangerous within prison.**

Moreover, the CPT considers that the introduction of a personal officer scheme for the 1st degree prisoners would provide an additional means of communication and, if done well, enable challenges to be identified and addressed before they result in conflict. **The CPT would appreciate the remarks of the Spanish authorities on this matter.**

76. At Seville II Prison, the CPT’s delegation met a prisoner (VD) who had apparently been held in conditions akin to solitary confinement since May 2018 (initially in Cordoba Prison and since May 2020 in Seville II Prison). He did not associate with any other prisoner either during daily outdoor exercise or during his time in the association room. The prisoner was classified as 1st degree under Article 91.3 and as FIES 1 (direct control),⁵⁹ due to his record of assaulting other prisoners prior to his arrival at Seville II.

However, the prisoner perceived his placement in *de facto* isolation as punitive and that Article 91.3 of the 1996 Prison Regulations was not being respected and that he was not being given a possibility to meet with the *equipo tecnico* to make his case. The CPT’s delegation agreed with the prisoner and further noted that his *de facto* isolation was not beneficial to his mental health, nor was it conducive to addressing his aggressive behaviour. These points were raised with the Director of Seville II Prison at the time of the visit.

⁵⁹ *Fichero de Internos de Especial Seguimiento*, as regulated by Article 6 of the Prison Regulations (Royal Decree 419/2011) and Instruction 12/2011 of the SGIP, is an administrative tool for greater control over prisoners with a specific profile. FIES 1 direct control (*control directo* CD) is for prisoners who are considered as dangerous and a threat to other prisoners and to staff. FIES 2 (*delincuencia organizada* DO) includes inmates sentenced or suspected of criminal offences related to their affiliation to organised crime; FIES 3 (*bandas armadas* BA) includes inmates who still belong or have belonged to a terrorist organisation; FIES 4 (FS) concerns prisoners who previously belonged to security forces of the State; FIES 5 (*colectivos especiales* CE) refers to prisoners with special characteristics such as sex offenders, escapees, or war criminals.

The CPT recommends that the Spanish authorities take steps to ensure that no prisoner is held in conditions of solitary confinement. Where it is not deemed possible for a prisoner to associate with other prisoners, additional efforts must be made by prison staff to ensure that the prisoner is provided with at least two hours of meaningful human contact every day. Further, for such prisoners, increased contacts with a psychologist and other treatment staff should be provided.

Further to the information received on 19 January 2021 concerning the prisoner VD above, the CPT would like to be updated about his current conditions of detention.

77. In the course of the visit, the CPT's delegation met a number of prisoners who were in need of psychiatric and psychological support and whose placement in the closed regime module was clearly detrimental to their mental health. For example, at Seville II Prison, a prisoner with post-traumatic stress symptoms who had been taken off his psychoactive medication upon his transfer from Seville I Prison on 22 March 2020 was clearly suffering and yet, in spite of more than 30 requests, had still not seen a psychiatrist. A foreign national prisoner was merely being contained in the closed regime module with no evidence of a plan to improve his mental and psychological health or even of an assessment of his situation with the help of a qualified interpreter.

The CPT recommends that, given the profile of the prisoner population, the health care team and, in particular, psychiatrists, should assess more carefully the mental health status of each prisoner placed in a closed regime and special department module. Where required, the support of a qualified interpreter should be sought.

78. The review of the 1st degree classification decision (*revisión de grado*) of a prisoner is undertaken by the treatment board (*junta de tratamiento*) every three months and confirmed by the SGIP in Madrid. Their decisions are informed by the three-monthly assessment of the multi-disciplinary technical teams (*equipo técnico*) which are responsible for developing an individualised plan and reviewing the progress, if any, of prisoners in the closed regime module. After an examination of the decisions pertaining to prisoners in the establishments visited, the CPT considers that there is still a lack of reasoning and communication in the procedures.

Several prisoners stated that they were not informed in due time of the decision to transfer them to 1st degree⁶⁰ (which often was taken after they had been transferred to another prison) nor of the precise steps they could take to challenge placement or renewal of such placement. In particular, prisoners did not realise that they had to appeal a decision to the Management Centre of SGIP first and thereafter to the supervisory judge, in accordance with the provisions of Article 105 of the 1996 Prison Regulations.

The CPT also considers that the placement review procedure should not be based solely upon a written procedure but should include a formal face-to-face meeting between the prisoner and the *equipo técnico* in order to receive the prisoner's input into the assessment. This is important as there is little other opportunity for the prisoners to demonstrate any progression while held in a closed regime or special department due to the lack of activities and minimal contact with members of staff.

⁶⁰ For example, a prisoner was placed in 1st degree by the Management Centre on 4 February 2020 while he was at A Lama Prison but was only notified of this decision on 17 July after having spent five months in Madrid VII Prison in the closed regime module. The decision to keep him in 1st degree was taken on 30 April and was communicated to him on 12 May (i.e. before he was officially notified that he had been placed in 1st degree) but with no information on how to appeal.

Further, the reasoning for maintaining a prisoner in 1st degree appeared to be standardised and did not provide any individual indicators of what was required of the prisoner in order to be considered for an ordinary regime module. In this respect, the CPT considers that the three-monthly reviews for certain categories of prisoner such as those sentenced to long periods for terrorism offences are clearly *pro forma* as it is evident that such prisoners will not benefit from a reclassification to 2nd degree within the first few years of their sentence. Therefore, it could be more meaningful to introduce a proper review only after one year and thereafter on a three-monthly basis, as laid down in the current regulations.

79. The CPT recommends that the Spanish authorities ensure that all prisoners placed in 1st degree are provided with clear and prompt information on their placement and the means of appealing such placement. Further, it recommends that all reviews of placement should include a face-to-face meeting between the prisoner and the *equipo técnico* of the prison prior to any recommendation being made to the *junta de tratamiento*.

In addition, the CPT would like to receive the comments of the Spanish authorities on the proposal to introduce a meaningful review after the first year of imprisonment instead of a *pro forma* three-monthly review for prisoners sentenced to particular crimes for long prison terms, when it is evident that such prisoners will clearly spend at least the first few years of their sentence in 1st degree before having a realistic chance of being reclassified to 2nd degree.

d. means of restraint

80. The resort to means of restraint and in particular the application of mechanical fixation to a bed of inmates for regime purposes (*sujeción mecánica regimental*) has been a focus of CPT visits to prison establishments throughout Spain for more than 10 years.⁶¹ In the course of the 2020 visit, the CPT's delegation was able to examine the measure in all of the prison establishments visited and noted the considerable progress in the reduction of the application of the measure and in its duration. This is positive. Nevertheless, the CPT continues to view the measure as one that is open to abuse and requiring even stricter safeguards, with the longer-term goal of its abolition.

81. The legal framework surrounding the use of means of restraint is governed by Article 45 of the 1979 General Prison Organic Law and Article 72 of the 1996 Prison Regulations.⁶² More specifically, Instruction 03/2010 of the SGIP specifies the difference between fixation for regime purposes or due to a medical condition as well as the modality of its application. As to the procedure for the application of mechanical fixation, irrespective of its purpose, Instruction 03/2010 states that only cloth straps (*correas*) be used for the prolonged fixation of prisoners and that a doctor must assess the compatibility of the fixation with the state of health of the prisoner as from the start of the measure, and thereafter every four hours. Further, prison officers should supervise the prisoner subjected to fixation at least once every hour.

⁶¹ See in particular the reports on the 2007, 2011, 2016 and 2018 visits at <https://www.coe.int/en/web/cpt/spain>.

⁶² According to Article 72 of the Prison Regulations, the following means of restraint can be applied in the Spanish prison context: i) provisional isolation; ii) physical force; iii) rubber truncheon; iv) pepper spray; v) handcuffs. Instruction 3/2010 of the SGIP establishes that mechanical fixation can be regarded as the use of handcuffs in the spirit of the Prison Regulations.

Following the report on the CPT’s 2016 visit and the publication of a [Best Practice Guide](#) in 2017 on mechanical fixation in prisons by the Spanish Ombudsman, the SGIP adopted a new Instruction 3/2018⁶³ which was intended to increase the safeguards surrounding the measure. The measure should be applied only as a last resort, should be accompanied by efforts to calm the prisoner down, and should last no longer than strictly necessary. The Protocol sets out the specifications for each room where the measure of fixation should be carried out and the monitoring by staff (in person every hour, continuous via CCTV and audio via a two-way intercom, every three hours by the Chief duty officer and by health care staff immediately the measure is applied and thereafter at four-hourly intervals). Further, prisoners should be fixated in the supine position (i.e. face-up) and not prostrate as was the policy in the past. The measure should be authorised by the Director of the prison and brought to the immediate attention of the supervisory judge. In practice, the measure is almost always authorised by the chief officer on duty and the supervisory judge is only informed one or more days (up to 12) after the measure has been terminated.

82. In the prisons visited, the resort to the measure of mechanical fixation to a bed for regime purposes had decreased significantly in 2019 and 2020, as had the resort to the measure throughout the prison system.

<i>Prison</i>	<i>2017</i>	<i>2018</i>	<i>2019</i>	<i>2020 (31 December)</i>
Castellón II	18	39	17	12
Madrid V (Soto del Real)	21	25	19	10
Madrid VII (Estremera)	29	10	6	5
Seville II	38	54	46	30
Total for all prisons ⁶⁴	966	900	460	339

*number of times that the measure of regime mechanical fixation to a bed was applied per prison based on information collected by the NPM and the overall figures supplied by the SGIP

Further, the length of time that prisoners were being subjected to mechanical restraint was generally much shorter and, importantly, there were hardly any allegations of ill-treatment associated with the application of the measure.

83. Nevertheless, based on an examination of the documentation pertaining to the measure of mechanical fixation to a bed in the prisons visited, as well as interviews with prisoners who had been subjected to this measure, a number of important issues continue to arise:

- Prisoners are still being fixated to a bed for periods that are longer than necessary. For example, at Castellón II Prison, a prisoner who was fixated at 21h10 was noted by the doctor at 22h03 to be “quiet with structured speech and no change of thought” (and at 4h19 “quiet , collaborating”) and yet he was only released from the straps at 8h15 the next morning.

⁶³ See also Instruction 4/20, which has reduced the maximum time period for a prisoner to be placed in handcuffs (short regime fixation) from 7 hours to 30 minutes.

⁶⁴ These figures do not include prisons in the Autonomous Community of Catalonia.

- Prisoners with a mental illness or who committed an act of self-harm or attempted suicide continue to be subjected to mechanical restraint to a bed which, given the circumstances under which the measure is carried out, cannot be considered a security measure but rather a punishment. Further, it is unlikely to resolve the underlying issues that led to the fixation being applied in the first place.
- The documentation on mechanical fixation is in many instances not accurately recorded with various times noted down for the start and end of the measure in different reports. In a number of cases, there is no record that the doctor visited the prisoner at the outset of the fixation or that there were subsequent visits every four hours. For example, at Madrid V (Soto del Real) Prison, according to the information in the computer system a prisoner was subjected to mechanical fixation from 18h20 to 21h20 on 12 September 2020 but according to the report of the chief duty officer and of two prison officers, the measure took place from 20h30 to 23h30, times which were also noted down in the medical documentation. Further, the supervisory judge was informed about the fixation on 13 and 14 September but in both cases the information provided did not include the medical report and it was stated that the measure ended at 11h30. Nor, importantly, did it include any information on the use of a truncheon whereas its use was recorded in the register (*Libro Registro de aplicación de medios coercitivos*). Consequently, the supervisory judge was not in a position to take an informed decision on the measure without requesting further information and explanations, which according to the documentation was never done. Not surprisingly, the oversight exercised by the supervisory judge on the use of coercive measures (handcuffs, mechanical fixation, use of force, including truncheons) is perceived as a rubber-stamp exercise.
- The measure of mechanical fixation to a bed was not immediately communicated to the supervisory judge when it was imposed at either Castellón II or Madrid VII Prisons, in contravention of the Instruction 03/2018. Further, of greater concern to the Committee, is that supervisory judges met by the delegation considered that they were not competent to intervene or control a measure of mechanical restraint to a bed. This is worrying given the potential for this measure to raise issues under Article 3 of the European Convention on Human Rights and hence the necessity for a strict control of its actual implementation.
- There is a need to ensure that staff who are working with challenging prisoners are able to communicate in a non-threatening and supportive manner without unduly provoking the prisoner. Miscommunication or poor communication can result in a breakdown in trust and in the prisoner lashing out, with severe consequences for staff and for the prisoner. For example, at Castellón II Prison, a dispute between a prisoner and an officer over whether his next visit would be one or three hours long led to him smashing his cell, injuring officers with a piece of glass and being fixated to a bed for 15 hours followed by transfer to yet another prison.
- Further, prisoners are still not given the opportunity to discuss their experience during and, in any event, as soon as possible after the end of a measure of mechanical fixation. Such a discussion should always involve a senior member of the health care staff or another senior member of staff with appropriate training.
- The absence of a dedicated register in the prisons visited detailing each measure of mechanical fixation to a bed is not in conformity with Instruction 03/2018.

84. 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 may be necessary, exceptionally, to resort to means of restraint in a prison setting. In the reports on its 2007 and 2011 visits, the CPT made several recommendations to the Spanish authorities on the necessity to adopt far stricter rules and proposed minimum standards governing the measure of mechanical fixation to a bed of inmates for regime purposes in prisons. In particular, the Committee stressed that fixation should only be used as a last resort for the shortest possible time in order to prevent the risk of harm to the individual or others and only when all other reasonable options failed to satisfactorily contain those risks. Further, the Committee recommended that the resort to fixation of an inmate should never be used as a punishment. The CPT's 2016 visit found that these recommendations had not been implemented and, therefore, the CPT called upon the Spanish authorities to end the current practice of resort to regime mechanical fixation to a bed of inmates in all prison establishments.⁶⁵

The findings from the 2020 visit show that the situation has evolved in the right direction, with the number of persons subjected to fixation substantially reduced and the periods of fixation considerably shorter. Nevertheless, the CPT continues to have concerns over the use of the measure of mechanical fixation to a bed, notably in relation to its necessity, the accurate documentation and supervision of each measure, its application on prisoners with a mental illness or in response to an act of self-harm. Further, it considers that resort to the regimental mechanical fixation could be reduced if staff were better trained to communicate in a non-threatening and supportive manner.

85. The CPT reiterates its recommendation that the Spanish authorities end the practice of mechanical fixation to a bed of prisoners for regime (security) reasons. Such a measure may only be undertaken for medical reasons and in a medical setting.

Pending the full implementation of this recommendation, the CPT notes that the Spanish prison administration has adopted Instruction 3/2018 and its Protocol and that it is committed to reduce progressively 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 Spanish authorities to:

- **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 is no longer in an acute crisis;**
- **ensure that a member of staff not only provides continuous and direct supervision of the inmate but engages with him/her verbally;**
- **put an end to the practice of forced medication of prisoners subject to mechanical fixation;**
- **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.**

⁶⁵ See CPT/Inf (2017) 34, paragraph 76.

The Committee would also like to receive information on the application of the measure of regime mechanical fixation from 1 January to 1 September 2021, broken down by prison establishment visited and including: the gender, duration, reason for applying the measure and whether the prisoners in question had a mental illness and/or had recently self-harmed or attempted to commit suicide. It would also like to receive the total number of times the measure of regime mechanical fixation was resorted to during this period in all Spanish prison establishments.

e. health care services

i. *preliminary remarks*

86. On 28 May 2003, the Law on the Cohesion and Quality of the National Health System (16/2003) entered into force which stipulated that within 18 months the responsibility for prison health care would be transferred to the national health service. However, 17 years later, the Law has still not been implemented and primary health care in prisons remains under the direct responsibility of the Ministry of the Interior and the SGIP.⁶⁶ Only in respect of specialised care have some contracts been signed between the regional health care service and the prison administration.

The findings of the 2020 visit reinforced the Committee's view that the Spanish authorities should move forward with the transfer of prison health care to the national health service. All of the medical personnel with whom the delegation met during the visit expressed the view that such a transfer should take place as it would benefit the quality of health care provided to prisoners by *inter alia* reinforcing through-care with the community and guaranteeing the independence of health care staff. This latter point was considered important even while recognising that health care staff would continue to work closely with prison officers and other prison staff.

The importance of this issue is recognised by the Spanish authorities. At the end of visit talks with the Minister of the Interior and the Secretary General of the Prison Administration, the CPT's delegation was informed that health care in prisons is considered a major challenge, exacerbated by the general shortage of doctors in Spain. Nevertheless, there was a clear recognition that there needed to be an equivalence of care for persons in prison and in the community and that the transfer of prison health care might be beneficial even if it would not resolve all the existing problems.

The CPT recommends that the Spanish authorities proceed immediately with the preparation of the transfer of prison health care to the national health service as envisaged by Law 16/2003. In this respect, the CPT would like to receive, in due course, a copy of the action plan drawn up for the transfer.

⁶⁶ By contrast, in Catalonia, 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* took over the responsibility for the provision of health care for prisoners through the Catalan Health Institute (*Institut Català de la Salut*). See the report on the CPT's visit to [Spain](#) of September 2018 (paragraphs 64 et al of CPT/Inf (2020) 5). Further, in the Basque autonomous community, responsibility for health care in prisons lies with the regional health authority since 2011 following the adoption of [Decree 140/2011](#).

87. 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.⁶⁷

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.

The CPT recommends that the Spanish authorities take immediate steps to bring existing practice into compliance with these principles and to promote their implementation in all prison establishments.⁶⁸

ii. health care staffing and equipment

88. The CPT's delegation was informed by the SGIP that the overall number of medical posts for the prisons was 500 and that there were currently 200 vacancies. It was further pointed out that even when competitions for new medical positions were advertised, there were insufficient candidates. For example, at the time of the visit only nine candidates sat the competitive exam to fill 35 permanent prison doctor posts. In the course of the visit, many of the doctors with whom the delegation met raised issues such as the lower salaries compared to national health service doctors, lack of independence and long hours as important factors putting off doctors applying to join the prison service. **The CPT recommends that the Spanish authorities take steps to address the current shortfalls in doctors, including any measures designed to make working in prisons more attractive such as the abolition of the 24-hour working shifts.**

89. Consequently, it is not surprising that the health care staffing levels in the prisons visited were insufficient. In particular, the lack of qualified nurses, including nurses with a mental health specialisation is acute. Further, the organisation of the health care services in certain prisons should be reviewed as, for example, having GPs work 24-hour shifts is not efficient or good practice especially as between 21h00 and 7h00 all prisoners are locked in their cells.

- at Castellón II Prison, the health care team consisted of three full-time equivalent (FTE) General Practitioners (GPs), six FTE nurses, seven FTE auxiliary nurses and two supervisors (i.e. one for health care and one for nursing care) for an inmate population of 998. At the time of the visit, the official number of vacant posts were six for GPs, seven for nurses and four for auxiliary nurses. The GPs met appeared exhausted after having worked 24-hour shifts for protracted periods of time;

⁶⁷ 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.

⁶⁸ 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).

- at Madrid V (Soto del Real) Prison, the health care team consisted of six FTE GPs, one Supervisor of Health Care and eleven FTE nurses for a prisoner population of 1,104. There were three vacant posts for GPs, and two for nurses;
- at Madrid VII (Estremera) Prison, the health care team was composed of four FTE GPs, one Supervisor of Health Care and eight FTE nurses for a prisoner population of 1,076. There were five vacant posts for GPs and four for nurses;
- At Sevilla II Prison, the health care team was composed of four FTE GPs including one medical subdirector, 11 FTE nurses and one nurse-supervisor, and 10 FTE nursing assistants for a prisoner population of 1,001. This is four fewer GPs than the prison had in 2016 when the establishment held 1,500 prisoners.

90. At the time of the 2020 visit, the above prisons were each holding around 1,000 inmates which prior to the COVID-19 pandemic had often exceeded 1,200. Consequently, there is a clear need to reinforce the health care staffing levels in these prisons.⁶⁹ Nevertheless, in light of the overall shortage of GPs in Spain, greater emphasis should perhaps be placed on increasing the nursing complement. The CPT has, as a general rule of thumb, considered that a prison ought to have one GP for 300 prisoners and one nurse for 50 prisoners. Of course, the figure is approximate as the real needs will vary from prison to prison depending on the profile of the prisoner population (turnover of prisoners, remand, age, comorbidity rates).

The CPT recommends that the Spanish authorities take steps to reinforce the health care teams in all of the prisons visited to ensure that, as a minimum, each standard prison with an inmate population of around 1,000 should have at least 20 nurses, including nurses with mental health qualifications. GP vacancies should also be filled. The staffing levels should be adjusted if the number of prisoners in an establishment increases significantly.

91. The level of standard equipment in the central infirmaries of the establishments visited was very good and consisted *inter alia* of a defibrillator, an oxygen mask, oxygen, an echocardiography machine, an emergency kit, an echograph, a Fibroscan machine, an analogue X-ray machine and ophthalmology microscopes. The dental suites also possessed equipment of a high standard. The medical premises visited were clean and offered sufficient space, and the in-patient premises adequately equipped and furnished.

iii. access to a doctor, initial screening and confidentiality

92. As regards access to a doctor, the CPT's delegation received several complaints at all establishments visited that requests for consultation with a doctor were met with consistent delays. In addition to health care staffing shortages, this was due to the fact that oral and written requests were administered by prison officers and no alternative systems were in place such as sealed envelopes, letter boxes or the possibility to address requests to the nurse distributing medication. Allegations that some prison officers were screening requests to see a doctor were reported to the delegation by members of the health care services.

⁶⁹ At Valencia Prison, which was holding 1,825 inmates at the time of the visit, the health care team consisted of seven GPs, one Supervisor of Health Care and 18 nurses, and apparently had 16 vacant GP posts.

The CPT reiterates its recommendation that steps be taken at the prison establishments visited as well as at all other Spanish 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 in dedicated boxes exclusively managed by health care staff (or through the introduction of an electronic request system or kiosk). Further, prison officers should not seek to screen requests to consult a doctor.

93. The medical examination carried out upon admission to prison of an inmate continued to be performed within 24 hours in all establishments visited and included a series of tests with a particular focus on syphilis, tuberculosis (TBC), HIV, hepatitis B (HBV) and hepatitis C (HCV).

As regards prisoners presenting injuries upon admission to the establishments visited, **reference should be made to the comments and recommendations in paragraph 58 above.**

94. Medical files were well organised and complied with confidentiality requirements, and there was a good recording of medical consultations (with the exception of the description of injuries). Further, medication was prescribed exclusively by doctors and the prison pharmacies were well-stocked. Prisoners on supervised medication received their medication at regular intervals while other prisoners received in possession medication. Prisoners with a chronic somatic disease were visited daily by a nurse in their modules and any “problematic” cases were referred to a doctor on the same day or the following day.

95. The CPT’s delegation found that the prevention, detection and treatment of transmissible diseases in the prisons visited was excellent. For example, prisoners diagnosed with hepatitis C were treated with direct-acting agent (i.e. interferon-free).

96. The CPT noted that prison officers were generally not present during medical examinations in the prisons visited and that inmates did not have to write down the reason they wished to see a nurse or doctor. However, whenever there was an incident and a prisoner was brought to the infirmary or a doctor was asked to come to a closed regime module, prison officers were present during the consultations with medical staff when the prisoner’s injuries were being examined. The officers were often the same ones who had allegedly inflicted ill-treatment on the prisoners.

The CPT recommends that prison officers and health care staff should be reminded that all medical examinations of prisoners must be conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of prison officers.

iv. drug use

97. All the prisons visited had programmes in place to support prisoners with drug addiction programmes. Opioid agonist treatment (OAT) in prisons ensured full conformity with treatment in the community with the possibility of starting OAT during imprisonment.⁷⁰ Further, needle and syringe exchange programmes were in place.

⁷⁰ The main OAT in use was methadone.

However, at Valencia Picassent Prison, admission to a methadone maintenance treatment programme was decided by a psychologist and the GPs were requested to sign the admission documentation without prior examination of the patient concerned. The CPT considers that a comprehensive assessment by a medical practitioner is essential prior to admission to a methadone programme, and **the Committee recommends that the Spanish authorities ensure that such an approach is taken at Valencia Picassent Prison.**

98. At the time of the visit, the Therapeutic and Educational Unit (UTE) at Madrid VII Prison (Module 13) was accommodating 17 men and two women who had been diagnosed with substance use disorder. They were supported by a multi-disciplinary team⁷¹ who were present on the module most days leading a group and individual therapy sessions. There were also outside interventions such as a health session on smoking and access to a range of activities. The rules for participating in the UTE programme were strict but for motivated prisoners it was highly beneficial, and there was good discharge planning, which included connecting with drug services in the community.

At Castellón II Prison, the UTE was located in Module 15 and accommodated 22 patients. The approach was the same but there were fewer staff present on a daily basis running programmes. As for Seville II Prison, the UTE programme in Module 9 had been compromised since the beginning of the COVID-19 pandemic by the admission of prisoners from other modules who did not have any substance use problems and by the fact that the psychologist no longer had any time for working on the UTE programme.

The CPT would like to be provided with an update on the situation of the UTE in the above-mentioned three prisons, notably as regards the number of persons in each programme, staffing levels and activities being offered as of 1 June 2021.

v. *psychiatric care*

99. The CPT's delegation found once again that access to psychiatric care for prisoners remained inadequate at the establishments visited.

- at Castellón II Prison, one tele-health session was provided per month for up to seven patients;
- at Madrid V (Soto del Real) Prison, two psychiatrists were present in the establishment for two hours six times per month;
- at Madrid VII (Estremera) Prison, one psychiatrist was present three times per month;
- at Seville II Prison, one psychiatrist was present once a week for four hours;
- at Valencia Picassent Prison, no psychiatrist had visited the establishment for almost one year.

The Spanish authorities have explained in the past⁷² that the Prison Administration does not provide specialist care and hence no psychiatrists are employed full-time in the prisons. The provision of psychiatric care is the responsibility of the national health service and the Prison Administration has either signed collaboration agreements with those autonomous regions willing to provide psychiatric services in prisons or has negotiated contracts for the provision of psychiatric services. It is clear that this model is not functioning properly and that prisoners with a mental illness are not receiving the treatment they require.

⁷¹ Sub-director for treatment, psychologist, jurist, social worker, nurse, educator and four prison officers.

⁷² See CPT/Inf (2017) 35, pages 30 to 32.

Further, the CPT's delegation again found that there was no clinical psychologist, apart from at Seville II Prison, providing assistance to inmates with a mental disorder. The CPT has noted the Spanish authorities' response to the report on the 2016 visit in which it was stated that "all the prison establishments have psychologists among their staff ... with enough knowledge and competence to intervene from the perspective of clinical psychology."⁷³ However, the reality in the prisons visited is that such interventions were not taking place for mentally ill patients.

The CPT recommends that the Spanish authorities take action to increase significantly the psychiatric input in each prison visited. Each of these prisons should have the FTE of at least one psychiatrist and Valencia (Picassent) Prison even more given its size and the existence of a psychiatric annexe. Further, each of these prisons should have at least one full-time clinical psychologist working with prisoners with a mental disorder.

100. In the report on its 2016 visit, the CPT commented on the dedicated programme for the comprehensive care of inmates suffering from a mental disorder in prison (PAIEM⁷⁴) which the SGIP had introduced into prisons in 2009. Prisoners who were admitted to the PAIEM programme were supposedly assisted by a multi-disciplinary team composed of a general practitioner, psychologist, educator, social worker, jurist and occupational monitor. Depending on the prison establishment, the prisoners were either grouped together in a single module or remained accommodated in their respective modules and participated in the programme on a weekly basis.

The CPT certainly agrees with the Spanish authorities that units holding mentally ill prisoners should not become asylums which further stigmatise these prisoners. Regrettably, the findings of the 2020 visit showed that this is exactly what occurs if the appropriate resources and programme are not offered.

For example, at Castellón II Prison, prisoners diagnosed with severe mental disorders were accommodated in Module 14, which was called the PAIEM module and comprised 36 cells. At the time of the visit, it accommodated 27 patients (including two patients deemed to be only partially criminally responsible⁷⁵) and five orderlies. Upon entering the unit, the CPT's delegation was transported back in time to scenes reminiscent of a "stereotypical" asylum. It appeared that the PAIEM module was being used simply to segregate these patients, controlling them through pharmacotherapy and the abusive power of the orderlies (see paragraph 60 above). Patients were not offered any counselling, psychotherapy or structured occupational activities.

101. By contrast, at Seville II Prison, the conditions and treatment afforded to patients on the PAIEM programme were much better. Module 14, which accommodated 24 of the 33 patients on the programme together with 10 orderlies, consisted of 36 cells on two floors. The ground floor association area was appropriately decorated, and the patients had access to a yard, table football, table tennis and a hairdresser. There were rooms for treatment programmes and a workshop.

⁷³ See CPT/Inf (2017) 35, page 30. The Spanish authorities also state that, according to Article 282 of the Prison Regulation 1981, prison psychologists are competent to "execute the psychological treatment methods for each inmate, especially in terms of individual and group psychological counselling, techniques for behaviour modification and behavioural therapy".

⁷⁴ *Programa de Atención Integral al Enfermo Mental (PAIEM).*

⁷⁵ *Responsabilidad penal incompleta.*

Importantly, treatment was offered through a multi-disciplinary approach which included a doctor, a psychiatrist, a psychologist, a social worker, and an educator. Each patient had an Individual Treatment and Rehabilitation Plan (*Programa Individualizada de Rehabilitación – PIR*) which was updated every 6 months in the form of a progression report. The administration of medication was supervised three times a day by assistant nurses visiting the module. However, not all patients were offered occupational activities even prior to the COVID-19 restrictions,⁷⁶ and the CPT's delegation gained the impression that the technical team was not monitoring the patients daily.

102. The fundamental principle advocated by the CPT is that persons with a mental disorder who require continuing and/or acute psychiatric treatment and care should not be held in prison but transferred to an appropriate health care facility. In the case of Spain, that should be the prison psychiatric hospitals of Alicante and Seville. However, as is outlined in this report (see Section C below), these hospitals do not currently provide adequate treatment and conditions for persons with severe mental disorders; nor do they have the capacity to admit more patients from prisons.

Therefore, the PAIEM programme and the dedicated modules in which prisoners with mental disorders are accommodated represent *de facto* a stepping-stone towards admission to a psychiatric hospital or a step-down unit for managing persons returned to prison from a psychiatric facility. In addition, they include prisoners identified as having difficulties in functioning in an ordinary prison regime and who require a tailored programme and specific assistance.⁷⁷

If the prisoners placed on the PAIEM programme and dedicated module are to be provided with the appropriate care for their mental illness, it is essential that the programme be provided with the appropriate resources. This means that every PAIEM should not only have a complete multi-disciplinary team (a doctor, a psychiatrist, a psychologist, a social worker, and an educator) but that the staffing complement should include psychiatric nurses, occupational therapists and officers with special training in working with mentally ill prisoners. Further, a structured programme of activities should be offered to all prisoners admitted to PAIEM, including access to occupational therapy, group therapy, individual psychotherapy, art, drama, music and sports. Further, the environment within the module where the PAIEM programme is carried out should be rendered the least carceral possible.

The CPT recommends that the Spanish authorities take steps to ensure that modules accommodating PAIEM prisoners provide these persons with the appropriate care and treatment they require. To this end, the Spanish authorities must increase the staffing resources for the PAIEM programme and offer a structured programme of activities beneficial to the prisoners, as highlighted in the above remarks.

The CPT would, in particular, like to be informed of any developments in the delivery of the PAIEM programmes at Castellón II and Seville II Prisons, as well as at Madrid V Prison.

Further, the CPT recommends that the Spanish authorities enhance the availability of beds in psychiatric care facilities for prisoners with mental disorders who require continuing and/or acute psychiatric treatment and care.

⁷⁶ For example, 20 in school, 14 in *petanca*, 14 in a communication workshop, 3 in a reading club and 1 in a painting class (January to March 2020); 14 in a board-games workshop and 16 in a cognitive stimulation workshop (April to June 2020).

⁷⁷ Some of these prisoners probably require care in a mental health facility but are identified as level II of the PAIEM programme.

103. The CPT's delegation met a number of forensic psychiatric patients under a court-imposed security measure⁷⁸ who were accommodated at each of the prisons visited. They were in principle accommodated in the infirmary or in the PAIEM Module if their mental health condition so permitted or even in an ordinary module, as was the case at Madrid V and Madrid VII Prisons. Their treatment was based exclusively on pharmacotherapy as their rehabilitative needs had not been specifically identified or addressed. Further, they received infrequent visits from a psychiatrist; and in some cases, none at all.

The situation was particularly concerning at Valencia (Picassent) Prison where prisoners were regularly sent by the Courts to receive "adequate care in the official prison psychiatric annexe" despite the fact that no psychiatrist had been present for nine months at the time of the visit and no mental health care was offered. Of the 54 patients in the annexe at the time of the visit, a not insignificant number were forensic psychiatric patients.

The CPT recognises that currently the two forensic psychiatric institutions in the country (located in Alicante and Seville) are often overcrowded and unable to accept more patients, and that they are also in need of fundamental reform (see Section C below). Nevertheless, the Committee considers that forensic psychiatric patients under a court-imposed security measure should be accommodated in a specialised health care facility where they can receive a much broader range of therapeutic, rehabilitative and recreational measures suitable for their specific needs.

The CPT recommends that the Spanish authorities take appropriate measures in order to transfer the forensic psychiatric patients accommodated in prison to an adequate health care facility where they are able to receive appropriate treatment for their mental disorders. Further, judges should be informed that prison is not a suitable environment for such patients and that to send them to a prison establishment which is incapable of providing appropriate care is both detrimental for the patient and for the prison.

104. In the course of the visit, the CPT's delegation had an opportunity to visit the Specialised care department for prisoners with learning disabilities in Module 14 of Madrid VII Prison.⁷⁹ The department was accommodating 28 persons and five prison orderlies. The technical team was composed of two psychologists specialised in working with persons with learning disabilities⁸⁰ and they visited the prison weekly. There was also an educator, social worker and jurist, all of whom worked for the prison. Most of the prisoners in the department had initially been identified by prison officers after noticing that the prisoners had difficulties in understanding the basic prison rules. Thereafter, the process for assessing their intellectual capacity and obtaining the official recognition was undertaken by the NGO which provided the psychologists.

The prisoners on the unit were encouraged to participate in various activities in addition to one hour of mandatory school each morning. Four attended vocational courses and four had paid jobs in the prison. However, opportunities for mixing with prisoners from other modules through sport and cultural activities had been curtailed by the COVID-19 pandemic.

⁷⁸ Most of the patients in question had been found criminally irresponsible by a Court in accordance with Article 20 of the Criminal Code and a security measure of internment in a psychiatric institution had been imposed on them pursuant to Article 101, paragraph 1, of the Criminal Code. In some cases the relevant Court had applied mitigating factors diminishing the criminal responsibility of the patients (pursuant to Article 21, paragraph 1, of the Criminal Code) and ordered the execution of a security measure in a psychiatric section of a prison institution pursuant to Article 104 of the Criminal Code.

⁷⁹ There are only two such units within the Spanish Prison system; the other one is at Segovia Prison.

⁸⁰ The psychologists were provided by a non-governmental organisation.

The ordinary disciplinary procedures were not applied as it was recognised that the delay between the incident and the sanction was too long for the prisoners to understand its meaning. Hence, a more restorative justice approach was taken such as prisoners who had been fighting having to work together for a week or after a verbal altercation having to say something nice about the other person.

The overall aim was to provide the prisoners with basic skills to achieve autonomy in their daily lives and, to this end, due to the involvement of the NGO the department was well run and could be considered to be demonstrating good practice. Nevertheless, the CPT does have concerns that prisoners with learning disabilities in need of a special regime are not being identified upon admission to prison or even during the court procedures and are exposed to life in the ordinary modules where they are unable to cope.

The CPT would like to be informed about the procedures and tools deployed to identify prisoners with learning disabilities and whether there is a need for increasing the capacity of the two departments.

f. other issues

i. *prison staff*

105. The number of prison staff in the prison establishments visited appeared to be adequate in relation to their occupational levels and the regime in force. For example, at Madrid VII Prison, there were 504 prison officers for 1,076 prisoners and at Sevilla II Prison, the number of prison officers was the same as in 2016 (493) but the population was slightly lower at 1,001.

By contrast, there appeared to be an insufficient number of educators and other members of treatment staff to properly follow the number of prisoners under their responsibility. For example, at Castellón II Prison, only 11 of the 18 educator posts were filled and staff complained of the turnover of technical staff which undermined the continuity in supporting prisoners.

The CPT would like to be informed about the steps being taken to ensure that all prisons have a full complement of both prison officers and treatment staff.

106. As regards training for prison staff, in light of the numerous allegations of provocative behaviour by prison officers, notably in the closed regime modules, and their apparent inability to defuse challenging situations, the CPT considers that more emphasis needs to be placed on developing the communication skills of prison staff. To this end, **the CPT would like to be informed about the on-the-job refresher training and further training provided to prison officers regarding communication skills once they have started working in a prison establishment. Reference is also made to the recommendations in paragraph 50 above on training on the subject of means of control and restraint for prison officers.**

ii. discipline

107. An examination of disciplinary procedures in the prisons visited revealed that prisoners were, as in the past, in principle able to benefit from the formal safeguards set out by Articles 240-250 of the 1996 Prison Regulations (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).

Nevertheless, the CPT considers that there are several aspects of the disciplinary procedure that warrant examination. One concerns the length of time that may pass between the infraction and the date when the disciplinary sanction is actually served, especially when prisoners are transferred to another establishment. A second is the continued application of a measure of solitary confinement for a period in excess of 14 days without any respite. Further, the practice of prisoners continuing to be disciplined, including being placed in solitary confinement, for an act of self-harm should be ended (see paragraph 113 below).

108. In numerous cases in all the prisons visited the CPT's delegation met prisoners who had to wait many months between the incident and the disciplinary decision and thereafter for the sanction to be implemented.

For example, a prisoner who committed a disciplinary offence on 24 April 2019 in Seville II Prison received the decision on his appeal on 4 October 2019 but only served the disciplinary isolation measure as from 3 August 2020 in Madrid V Prison. At Castellón II Prison, a prisoner who was involved in an incident on 1 August 2019 received his disciplinary sanction on 18 December 2019, which he appealed. The supervisory judge issued a decision on 30 April 2020 and he served a period of solitary confinement from 10 to 20 August 2020, more than a year after the incident.

In a third case, a prisoner who had apparently committed 10 offences between 17 and 23 September 2019 in A Lama Prison had been sanctioned with 300 days of deprivation of walks and common recreational activities by the prison disciplinary commission in early December 2019 and on 7 February 2020 (final decisions as he did not appeal). Since his transfer to Madrid VII (Estremera) Prison in early 2020 he had not committed any disciplinary offences. However, as of mid-September 2020, he still had to serve the above 10 sanctions and a number of others.

109. A hearing into a disciplinary offence needs to be held as soon as possible after the alleged offence, preferably within a couple of weeks, and thereafter the sanction should be served immediately (or, if appealed, immediately after that decision). Any delay does not serve the needs of maintaining good order in the prison and severs the link between the offence and the punishment. It would be preferable for prisoners to serve a sanction in the prison in which they committed the offence and thereafter be transferred to a new prison rather than being transferred to a new prison and having to serve a series of disciplinary punishments over many months as this disrupts the ability of the treatment staff to build a relationship with a challenging prisoner. Further, whenever there is a long delay between an offence and the decision on a sanction and its execution, and the prisoner has been transferred to a new prison in the meantime, the director of the receiving prison should be authorised to review the disciplinary sanction in the light of the behaviour of the prisoner since his arrival.

The CPT recommends that the Spanish authorities review the timelines for hearing alleged disciplinary offences and for the application of disciplinary sanctions with a view to ensuring that the link between the offence and the punishment is maintained, and that it serves the maintenance of good order in the prison.

Further, when prisoners are transferred to another prison establishment following an alleged disciplinary offence and no disciplinary punishment is imposed for several months, there should be procedures in place to review the application of any disciplinary sanction in the light of the behaviour of the prisoner.

110. According to Article 42 of the 1979 Prison Law and of Article 236 of the 1996 Prison Regulations, a sanction of solitary confinement for a very serious infringement⁸¹ may not exceed fourteen days for a single offence⁸² or forty-two days if imposed for concurrent disciplinary offences. The supervisory judge must approve any period of solitary confinement in excess of 14 days.⁸³

In practice, prison establishments were applying sequential periods (up to 14 days each) of solitary confinement of inmates with an interruption of only one day, with that single day usually spent alone in their own cell under a measure equivalent to provisional isolation.⁸⁴

For example, at Castellón II Prison, a prisoner was placed in solitary confinement as a disciplinary punishment from 17 June to 22 July 2019 with only the periods from 26 to 27 June and 10 to 11 July out of a solitary confinement cell. At Madrid V (Soto del Real) Prison, 14 months after the date of the incident, a prisoner was placed in disciplinary solitary confinement from 3 August to 7 September 2020 with only the nights of 14 and 28 August and of 2 September “interrupted” in his own cell in provisional isolation. He effectively spent 35 days in continuous disciplinary solitary confinement. Another prisoner was placed in disciplinary solitary confinement for 36 days continuously from 20 January to 24 February 2020 with no break at all. In a third case, a prisoner was placed in disciplinary solitary confinement for 80 days (divided into periods of 20, 24 and 36 days) between 8 June and 7 September 2020 and was scheduled to spend another 19 days as from 14 September 2020. In all, there were 24 cases of prisoners scheduled to spend longer than 14 days in disciplinary solitary confinement between 1 January and 15 September 2020. A similar state of affairs was in evidence at the other prisons visited.

⁸¹ Pursuant to Article 108 of the Prison Regulations, very serious infringements are, for example, mutiny, internal riots, physical aggression towards another person, active resistance to an order, and escape.

⁸² Article 42, paragraph 3, of the 1979 Prison Law envisages the possibility for disciplinary sanctions to be increased by half of their maximum in cases of repeated violations.

⁸³ See Articles 76^o paragraph 2, d) of the 1979 Prison Law and 236, paragraph 3, of the 1996 Prison Regulations.

⁸⁴ Pursuant to Article 72 of the 1996 Prison Regulations.

111. Given the potentially very damaging effects of solitary confinement,⁸⁵ the CPT has consistently argued that the maximum period for solitary confinement as a punishment should be no more than 14 days for a given offence, and preferably lower. Further, there should be a prohibition on sequential disciplinary sentences resulting in an uninterrupted period of solitary confinement in excess of the maximum period. Any offences committed by a prisoner which might call for more severe sanctions should be dealt with through the criminal justice system. If a prisoner has been sentenced to disciplinary confinement for a total of more than 14 days in relation to two or more offences, there should be an interruption at the 14-day stage (i.e. at least two days and preferably several days depending on the individual) during which the prisoner should have the possibility to associate with other persons and participate in activities.⁸⁶

112. The Committee reiterates its recommendation that the Spanish authorities act to ensure that no prisoner is held continuously in solitary confinement as a punishment for longer than 14 days. If the prisoner has been sentenced to solitary confinement for a total of more than 14 days, there should be an interruption of several days in the solitary confinement at the 14-day stage, during which time the prisoner should have the possibility to associate with other persons and to participate in activities.

Further, supervisory judges should be made aware of the harmful effects that may result from placing a prisoner in solitary confinement as a disciplinary punishment for longer than 14 days.

More generally, the CPT also considers that a single incident should not result in more than one disciplinary punishment of solitary confinement and that any offences committed by a prisoner which might call for more severe sanctions should be dealt with through the criminal justice system.

113. The CPT's delegation found that in all the male prisons visited, persons who committed an act of self-harm would be subject to a disciplinary punishment and could be placed in solitary confinement. Staff considered that such acts were attempts at manipulation and therefore should be punished. At the same time, the investigating instructor and disciplinary commission did not seek the opinion of a psychologist or doctor about the prisoner concerned.

The experience of the CPT is that even where there may be an element of manipulation an act of self-harm frequently reflects problems and conditions of a psychological or psychiatric nature and should be approached from a therapeutic rather than a punitive standpoint. Further, a disciplinary sanction is likely to exacerbate any psychological or psychiatric problems. In this connection, it should also be added that all cases of self-harm ought to be assessed medically immediately after the incident to evaluate the extent of lesions and to assess the psychological state of the prisoner.

The CPT recommends that the Spanish authorities ensure that acts of self-harm are no longer subjected to disciplinary punishment in prisons. 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.

⁸⁵ See for example, Shalev, S., *A Sourcebook on Solitary Confinement*, Mannheim Centre for Criminology, London 2008 (available at www.solitaryconfinement.org) and [WHO Europe: Prison and Health 2014](#) (.Chapter 5 on solitary confinement as a prison health issue).

⁸⁶ See Rule 60.6 and its commentary of the revised 2006 European Prison Rules from 1 July 2020 as well as Rules 43 and 44 of the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules).

114. At Castellón II Prison, the recourse of prison management to disciplinary sanctions appeared to be particularly high and seemed to reflect the antagonistic relations between a portion of the prison officers and prisoners. For example, the delegation was informed by prison staff that in the first nine months of 2020 (up to 23 September), there were as many as 1,084 disciplinary punishments⁸⁷ for a prison population of around 1,000. **The CPT would appreciate the comments of the Spanish authorities on this matter. Further, it would like to receive a breakdown of disciplinary punishments at Castellón II Prison for the first six months of 2021 according to the criteria of Articles 108 (very serious offence), 109 (serious offences) and 110 (light) and the punishments imposed under Article 111 of Prison Regulation 1201/1981.**

iii. contact with the outside world

115. As was the case in the past, prisoners were afforded reasonably good contact with the outside world. Prisoners were entitled to two 20-minute visits per week, with a maximum of four visitors; prison management may authorise that these two weekly visits, which take place in closed visiting booths, be accumulated. Prisoners may receive two monthly open visits, lasting between one and three hours each, one of them being an intimate (so-called *vis-à-vis*) visit, the other from 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 five minutes each per week.

However, as part of the measures taken to combat the COVID-19 pandemic, all visits to prisons were suspended between March and July 2020, and *vis-à-vis* visits had still not been reintroduced as of mid-September. To compensate for these restrictions, prisoners had been granted an extension of their telephone calls from five to 15 minutes and the possibility of being granted a free video-conference call of 10 minutes per month. However, the procedures to be granted a video call on a mobile phone appeared complicated and many prisoners stated that they had not been granted such a call or that it had only been offered once in five months. In addition, prisoners with family members in prison should be offered the possibility to be in contact with each other either via telephone communication or a visit if they are located in the same prison establishment.

The CPT reiterates its recommendation that the Spanish authorities allow all visits to take place as a rule in open conditions and that visits in closed booths be restricted to those cases when it is justified for security-related reasons.

Further, the CPT recommends that as long as the COVID-19 restrictions on family visits remain in place, greater efforts should be made to ensure that all prisoners are offered a video-conference call *in lieu* of an open visit. In addition, the CPT would like to be informed of the rules now in place in Spanish prisons to enable foreign national prisoners and those Spanish prisoners imprisoned long distances from their homes to conduct conversations with family members through Voice over Internet Protocol (VoIP).

⁸⁷ Of which 56 were dismissed. Further, in the period 1 January 2019 to 23 September 2020, 577 prisoners received the most serious disciplinary punishment of 6 to 14 days under Article 111a of the Prison Regulations.

iv. complaints procedures

116. All prisoners are entitled to file requests (*peticiones*) in relation to the application of one of their rights or benefits and to lodge complaints (*quejas*) 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 SGIP to the supervisory judge.

In the course of the 2020 visit, the CPT's delegation observed that requests and complaints (not relating to allegations of staff ill-treatment as evidenced in paragraph 50 above) 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.

117. 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 Prison Law, the CPT's delegation noted once again that judges were still not visiting prisoners in the accommodation units or the closed modules or special departments of the prisons visited.

In terms of their control of the legality and proportionality of the application of means of restraint, use of force 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 these measures by the supervisory judges.

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 and, to this end, the necessity for them to visit the accommodation units, especially the closed modules and special departments, within a prison.

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*).

3. Prison establishments for women

118. In many countries, prisons are largely designed by men for male prisoners and to be managed, primarily, 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 and needs 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 2010,⁸⁸ and more particularly in Rule 41(a).⁸⁹

119. In practical terms, there is much to be said for developing a network of small dedicated women-oriented custodial centres around the country to accommodate women who need to be held in secure accommodation. Such centres should be oriented towards preparing women to re-enter the community, enable women to be held closer to their families and homes and have a security regime commensurate with the risks posed by the women.

However, at present, due to the small number of prison establishments that accommodate women, they are often placed far away from their homes. At the same time, the burden of caretaking responsibilities falls disproportionately on women and therefore they need to have good regular access to their families. Therefore, pending the creation of a network of centres, **the Spanish authorities should introduce additional compensatory measures for women prisoners to facilitate their possibilities of maintaining contact with their families.**

By communication of 19 January 2021, the Spanish authorities informed the CPT that the SGIP is in the process of reviewing its approach towards women in prison with the creation of an Equality Department within SGIP and the commissioning of a new report on women in prison.

The CPT recommends that the Spanish authorities take into account the above comments in the development of a gender-specific approach towards women in prison. Further, it would like to receive a copy of the report on women in prison being drawn up by the SGIP and to be informed of any new strategy that is adopted thereafter.

⁸⁸ Adopted by UN General Assembly resolution 2010/16, A/C.3/65/L.5, on 6 October 2010.

⁸⁹ “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”.

120. In Spain, women make up 7.6% (3,822 in December 2019⁹⁰) of the overall prison population. There are only two all-women prison establishments under the Prison Administration of Spain (SGIP), namely Ávila Women's Prison and Alcalá de Guadaira Prison in Seville.⁹¹ This means that the vast majority of women prisoners are held in one or two modules within predominately male prisons with no gender-specific approach towards the women. The male ethos of these prisons tends to pervade through to the female modules especially as there is no distinct management of women within these establishments.

The CPT recommends that the Spanish 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 and needs assessment and classification of prisoners. Further, if women have to be held in predominately male prisons, there should be a distinct prison management of women prisoners within the overall management of the establishment with a dedicated prison complement (see paragraph 135 below).

121. The CPT's delegation visited Ávila Women's Prison which was holding 70 women⁹² for an official capacity of 300. It also examined the situation of women held in Modules 9 and 10 (*modulo respecto*) at Madrid VII (Estremera) Prison, which together held 101 women.

a. ill-treatment

122. The vast majority of women prisoners met stated that they were treated correctly by prison staff; this was notably the case at Ávila Women's Prison where no allegations of physical ill-treatment were received and a relatively relaxed atmosphere was in evidence in the two ordinary accommodation wings.

At Madrid VII Prison, a few allegations of ill-treatment and verbal abuse by prison officers were received. In particular, one allegation concerned a prisoner being punched in the face in June 2020 while she was in the admission module prior to her transfer to Ávila Women's Prison. Further, at Ávila Women's Prison, a number of women met in all the modules stated that they had been subjected to ill-treatment or excessive use of force at previous prisons prior to their transfer to Ávila.

The CPT recommends that the Spanish 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.

⁹⁰ This does not include the 563 women (7%) held in prison establishments in Catalonia.

⁹¹ In Catalonia, there is Barcelona Women's Prison and the stand-alone Women's Department of Brians I Prison – see the report on the September 2018 visit. Ref: [CPT/Inf \(2020\) 5, paragraphs 86 to 113](#)

⁹² One male prisoner was being held in a discrete small unit at the entrance to the closed section of the prison for "safety issues".

123. It was noted that there were some incidents of inter-prisoner violence at Ávila Women's Prison and in Module 9 of Madrid VII Prison but the vast majority were not of a severe nature and staff intervened promptly. However, as regards bullying, staff need to be more alert to such instances and easily available avenues for prisoners to raise concerns need to be in place. In this respect, it is necessary for prison officers to be present on the wing during association periods, notably in the evening when fewer organised activities are ongoing. For example, staff on Module 9 of Madrid VII Prison had been relatively slow to intervene to stop a situation of bullying by two prisoners of foreign nationals. **The CPT would like to be informed of the measures in place at Madrid VII Prison to prevent bullying.**

b. admission procedure

124. The admission procedure is generally well organised in Spanish prisons.

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 1996 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).⁹³

125. Such a review requires looking at the particular vulnerabilities of women 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). While it may not be appropriate for such screening to be carried out immediately upon admission to prison out of concerns to avoid re-traumatisation, it should be factored into the admission "process" and take place within the first few weeks following admission. 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.

⁹³ 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".

The CPT's delegation found that at Ávila Women's Prison, medical screening for sexual and gender-based violence and reproductive health history was generally not being carried out. The prison management recognised the importance of developing programmes for women and quoted a recent study that had found that 70-75% of women in prison had been victims of serious gender violence and that another 9.6% had suffered some other form of violence.⁹⁴ However, no counselling or courses on victims of violence were offered, and the so-called individual treatment plan did not document, promote or reflect such needs. At Madrid VII Prison, a similar situation pertained; further, at this prison, several women complained that they had not been provided with clear information about how the prison operated upon their admission, that there was no information brochure on the establishment and that they had had to rely on other prisoners to tell them about the rules, procedures and schedule.

The CPT recommends that the Spanish authorities develop the admission procedures at all 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.

Further, the CPT recommends that all prisoners be provided with an information brochure on the operation of the prison establishment.

126. The CPT found that the same concerns relating to the recording and reporting of injuries for women prisoners as for male prisoners were in evidence. **The recommendations in paragraph 58 above applies equally to all women prisoners.**

c. conditions of detention

127. Ávila Women's Prison consisted of an admissions unit and four accommodation wings accessed off a central corridor.

The two main ordinary regime accommodation wings (Red and Blue) were identical in layout with each wing containing 64 cells in an L-shape overlooking a large concrete outdoor yard. The cells measured 9.5m² and were equipped with a bunk bed, a table and chair(s), a cupboard and a toilet and washbasin, which was separated from the rest of the cell by a partition (1.5 m high). Access to natural light was adequate and the heating and artificial lighting sufficient. The ground floor of these wings contained an association and classroom area and the dining hall. The yard was accessible throughout the day and included benches, a sheltered area next to the coffee shop and a shower and sanitary facility. At the time of the visit, the Red module was accommodating 30 women and the Blue ("*respeto*") module 27 women.

The closed regime wing (Green) contained 28 cells furnished in the same way as the other wings and was accommodating six women at the time of the visit. The concrete outdoor exercise yard was austere and had no shelter from the sun or rain.

⁹⁴ The figures are taken from a 2018 evaluation of the "*SerMujer.es*" programme on gender violence which has been running in Spanish prisons since 2011. See also *Asociación Pro Derechos Humanos de Andalucía (APDHA)* Report on the situation of Women Prisoners in Spain and Andalusia of March 2020.

The Yellow wing served various functions, including housing the infirmary. It contained 13 cells divided into three distinct sub-units and was accommodating seven women: Cells 1-5 for prisoners under a special regime (Article 91.3) or disciplinary measure; Cells 6-9: Observation cells (cell 8 accommodated a prisoner who was charged with observing the occupants of cells 7 and 9 through large transparent windows in the walls) and Cells 10-13 for the infirmary in-patients. Cell 13 was equipped with a bed for fixating prisoners. Each unit had access to a small yard; the yard for the special department prisoners was austere and contained no means of rest (benches) or shelter from the sun or rain.

The admission unit consisted of six cells similarly furnished to the cells in other wings. Most women only spent 24 hours in these cells before being moved to an accommodation wing. The unit also contained a padded cell.

The CPT recommends that the outdoor exercise yards in the Green and Yellow wings be equipped with a means of rest and a shelter from the sun or rain. Further, the yards should be made less austere.

128. At the time of the visit, some 31 of the 70 women at Ávila Women's Prison were engaged in some sort of remunerated activity such as Radio Brieva, general services and a workshop to make masks. Other activities had been suspended such as workshops for making carpets and painting.

It was noticeable that almost none of the 30 women accommodated on the Red module were engaged in any workshops or activity other than school, cleaning and serving food.

Further, there were no vocational activities on offer, which would enable the women to acquire formal qualifications, facilitating their reintegration into the community upon release. The CPT considers that the Spanish authorities ought to offer women prisoners greater access to activities and courses of a vocational value in the community and not only gender stereo-typed courses such as sewing and cooking.

The CPT also considers that when a prisoner who is classified as 1st degree does not wish to participate in one specific activity, that person should not be deprived of all available activities. For example, a woman met at Ávila Prison, who was located in the Green module, was not permitted to participate in any school or library activities because she did not want to take part in the sports (gym) activities. In fact, given that this prisoner had broken her shinbones (distal tibia fractures) in January 2020, in a car accident prior to imprisonment, there was a valid reason for her not wanting to take part in sports activities.

The CPT recommends that the Spanish authorities develop the range of activities on offer to women prisoners with a view to offering them paid work and vocational programmes which will assist their reintegration into the community. The CPT would like to be provided with an update on the number of women engaged in purposeful activities as of 1 June 2021 at both Ávila Women's Prison and at Madrid VII Prison.

Further, prisoners in a closed regime wing should not be denied access to all activities on the grounds that they do not want to participate in one specific activity.

129. Weekly activity sessions were organised for women with a mental illness and for women following the PICOVI violence behaviour programme, but other programmes had been suspended such as the therapeutic activity of walking abandoned dogs. The CPT's delegation was also surprised to learn that at an all-women's prison, it was not possible to run the structured programme "Being a woman" (*ser mujer*), which sought to cover *inter alia* issues of economic independence, self-esteem, assertiveness, contraception and mental health. The reason was the difficulty to find a closed group of up to 15 women who could be enrolled in the programme together for 18 months. Such an approach appears rather formalistic and the CPT considers that there ought to be a degree of flexibility in being able to run the programme with a slightly smaller group and perhaps on a modular basis in six- or nine-month segments, if feasible. **The CPT would appreciate the comments of the Spanish authorities on this matter.**

d. health care services

130. At Ávila Women's Prison, the health care team consisted of three GPs engaged from a private clinic since 1 September 2020⁹⁵ who visited the prison on a rota basis every working day for eight hours and were on-call at weekends. They were supported by three FTE nurses and five FTE auxiliary nurses. There was no sub-director for health and no indication was given whether the GPs would continue to visit the prison beyond December 2020 when the existing contract ended. In addition, the prison was visited by a psychiatrist and a gynaecologist once a month, and a dentist twice a month.

The CPT would like to receive confirmation that a permanent solution for the provision of GP services at Ávila Women's Prison is now in place and that a sub-director for health has been appointed.

131. The medical examination carried out upon admission to prison of an inmate was performed within 24 hours and included screening on suicide and self-harm risk, mental disorders, substance withdrawal symptoms and a series of tests with a particular focus on syphilis, TBC, HIV, hepatitis B (HBV) and hepatitis C (HCV). Positively, the electronic medical record included an additional section relating to sexual and reproductive health.

As regards prisoners presenting injuries upon admission to the establishment, **reference should be made to the comments and recommendation in paragraph 58 above.**

132. In general, the CPT's delegation found that access to the health care service was easy, medical confidentiality of consultations and documentation was respected and the medical equipment was of a good standard. Medication was properly stored and the range available very good. Treatment for hepatitis C and HIV was offered rapidly once the disease was detected.

One outstanding issue was that the GPs from the private clinic had not been granted unhindered access to primary health and local hospital files for persons held in the prison which impacted adversely on the continuity of care. This had not been a problem up until December 2019 when the prison GPs had been Ministry of the Interior employees. **The CPT would like to receive confirmation that this issue has now been resolved.**

⁹⁵ Between December 2019 and June 2020, no GP had visited the prison and from June to September 2020 a doctor visited the prison once every second week.

133. At the time of the visit, 50 of the 70 women were receiving some kind of psychotropic medication. Such a situation naturally results in bullying which, once detected, would usually result in more vulnerable prisoners having to take their medication under supervision and not in-possession. The CPT considers that many of these prisoners might be able to decrease their reliance upon, or even interrupt, their psychotropic medication if the prison contracted a clinical psychologist to offer psychotherapy sessions.⁹⁶

It was also unfortunate that no PAIEM programme existed as no distinct unit with a uniformed approach could be established. This meant that those women with a mental disorder were held on the Red Module and while the prison management took into account their mental health when disciplinary offences were committed by not always imposing a sanction, this created frictions with the other women on the module. **The CPT would appreciate the comments of the Spanish authorities on these two issues.**

134. At Ávila Women's Prison, the management recognised that cutting and other forms of self-harm were prevalent among women inmates and therefore acts of self-harm were not punished with a disciplinary sanction. However, at Madrid VII Prison and other prisons which accommodated women prisoners, it appeared that many prison officers 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.

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 Spanish 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 at 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,⁹⁷ with an emphasis on de-escalation and rapport-building rather than restraint and isolation.**

⁹⁶ The two prison psychologists were not authorised to provide any psychotherapy and indeed they spent most of their time working with adult men in the community serving an alternative sentence.

⁹⁷ See also the CPT Factsheet on Women in Detention, Section 5: Gender-sensitive prison management, staffing and training – CPT/Inf(2018)5.

135. As mentioned above, cell 8 in the Yellow wing was occupied by a prisoner who was tasked with observing the two women accommodated either side of her cell through a large glass window in each wall as they were considered vulnerable and at risk of self-harming or attempting to commit suicide. The prisoner was not trained for such work. Moreover, while it may be appropriate for prisoners to be trained to provide a mentoring role to support vulnerable prisoners, the CPT considers that no prisoner should be made responsible for supervising another prisoner who is assessed as being at risk of attempting to commit suicide.

The CPT recommends that the Spanish authorities no longer task prisoners to act as permanent observers of other prisoners at risk of committing an act of self-harm or suicide and that such a task be given to trained members of staff.

e. other issues

136. 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.⁹⁸

The fact that many women prisoners have been subjected to sexual and gender-based violence prior to imprisonment 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.

The CPT recommends that all custodial staff working with women prisoners receive gender-specific training. Further, the overall ratio of female prison officers to male prison officers working in women's prisons and detention units, and notably the number of female prison officer managers (*Jefe de servicios*), should predominate. The CPT would like to receive a breakdown of such ratios for both women's prisons and for modules 9 and 10 of Madrid VII Prison.

⁹⁸ See Rules 29 to 33 and Rule 35 of the Bangkok Rules.

137. The disciplinary system described in Section 2.g.ii above applies equally to women prisoners.

At Ávila Women's 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. It was also positive that women who self-harmed were not subject to a disciplinary sanction.

138. As regards contacts with the outside world, the situation at Ávila Women's Prison was the same as in the male prisons visited with open family visits and intimate visits suspended due to the COVID-19 pandemic. In compensation for this situation, most women were being offered two video calls per month of 10 minutes' duration each. By contrast, women met at Madrid VII Prison stated that they did not receive two video calls a month and those foreign national women from South America complained that their requests to make their calls in the afternoon and not the morning due to the time difference had been ignored.

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 this respect, the CPT considers that for foreign national prisoners and for women whose families live a great distance from Ávila, the option of being offered two video calls per month of 10 minutes' duration each, using VoIP technologies, should be maintained even after the pandemic has ended and face-to-face visits are resumed.

The CPT recommends that access to Voice over Internet Protocol (VoIP) technologies continue to be offered to foreign national prisoners and other women whose families live a great distance from the prison in which they are located.

C. Prison Psychiatric Hospitals

1. Preliminary remarks

139. In the course of the 2020 visit, the CPT's delegation visited for the first time since 2003 the two prison psychiatric hospitals (PPHs) of Alicante and Sevilla.⁹⁹ The treatment and living conditions of psychiatric forensic patients in these establishments were examined as well as legal safeguards afforded to them in the context of their placement.

140. The legal framework governing the placement of forensic patients in a PPH is regulated by the Spanish Criminal Code (CC).¹⁰⁰ A custodial security measure may be imposed on individuals who, in the course of criminal proceedings, have been found by a court to be not responsible either fully (pursuant to Article 101 of the CC)¹⁰¹ or partially (pursuant to Article 104 of the CC)¹⁰²¹⁰³ for a criminal offence.¹⁰⁴ Further, upon the decision of a judge, remand prisoners may also be placed in such facilities for assessment of their mental status pursuant to Articles 381 and 991 to 994 of the Criminal Procedure Code (CCP). In addition, sentenced prisoners may be transferred to a PPH for treatment if they develop a mental disorder after incarceration pursuant to Article 60 of the CC.¹⁰⁵ The duration of the security measure varies but cannot exceed the total duration of the imposable criminal offence for the crime in question¹⁰⁶ and the measure is subject to an *ex officio* annual review by the competent judicial authority (see paragraph 169).¹⁰⁷

⁹⁹ Further, under the authority of the Catalan regional authorities, a forensic psychiatric unit also operated within Brians I Prison.

¹⁰⁰ Article 96 of the CC envisages the following three custodial security measures: 1) internment in a psychiatric institution; 2) internment in a detoxification centre; 3) internment in a special education centre.

¹⁰¹ Article 101 of the CC provides that persons exempted from criminal responsibility may have a security measure of medical internment or special education in an institution for the treatment of mental disorders imposed upon them.

¹⁰² Article 104 of the CC provides that in the case of incomplete exemption from criminal responsibility, a person may have an internment measure imposed upon them in addition to the relevant criminal sentence.

¹⁰³ Pursuant to Article 20 of the Spanish Criminal Code "*The following persons shall not be criminally accountable: 1) Those who, at the time of committing a crime, due to any mental anomaly or alteration, cannot comprehend the unlawful nature of the act, or act in line with that comprehension. A transitory mental disorder shall not cause exoneration from the punishment when provoked by the subject in order to commit the offence, or when he would or should have foreseen that it would be committed. 2) Whoever, at the time of committing a felony or misdemeanour, is in a state of absolute intoxication due to consumption of alcoholic beverages, toxic and narcotic drugs, psychotropic or other substances that cause similar effects, as long as such a state has not been sought for the purpose of committing it, or when he would or should have foreseen that it would be committed, or when under the influence of a withdrawal syndrome, due to his dependence on such substances, that prevents him from comprehending the unlawfulness of the act, or acting in keeping with such comprehension. 3) Whoever, due to suffering alterations in perception from the time of birth, or from childhood, has a seriously altered awareness of reality.*" Further, Article 21 of the Criminal Code also provides for mitigating circumstances for criminal liability, which apply to those who, even though they do not meet all the necessary requirements to be exempted from liability, are affected by some of the circumstances listed in Article 20 of the Criminal Code.

¹⁰⁴ Pursuant to Article 6, paragraph 1 of the CC security measures "*are based on the criminal risk of the subject on whom they are imposed by committing an act defined as a felony.*"

¹⁰⁵ Article 60 of the CC regulates the suspension of the sentence before the competent supervisory judge in respect of a convict who has developed a mental disorder during incarceration and the imposition of a security measure of a custodial nature in view of his/her mandatory treatment after which the rest of the sentence would normally be served in a prison establishment.

¹⁰⁶ Pursuant to Article 6, paragraph 2 of the CC.

¹⁰⁷ In accordance to Article 98, paragraph 1 of the CC.

141. As mentioned in paragraph 139 Alicante and Sevilla PPHs are the only forensic psychiatric institutions under the jurisdiction of the Secretariat General for Prison Institutions (SGIP) within the Ministry of the Interior which accommodate forensic patients subject to a security measure or mental assessment.¹⁰⁸ That said, forensic patients could also be accommodated in a special module of ordinary prison establishments. At the time of the September 2020 visit, there were approximately 550 forensic patients accommodated either in one of the two PPHs or in various prisons.¹⁰⁹

Alicante PPH,¹¹⁰ consisting of a stand-alone establishment, is located just outside of the perimeter of Alicante Foncalent Prison complex, seven kilometres west of the city. It was accommodating 268 forensic patients, including 33 females, for a capacity of 324 places at the time of the visit. Seven patients were undergoing an assessment as remand prisoners, 29 as sentenced prisoners, 30 were deemed to be partially criminally responsible¹¹¹ and 202 not criminally responsible.¹¹² The establishment consisted of four residential two-storey modules (Nos. 1-4), one of which, recently renovated, was being used as quarantine area for COVID-19 suspected cases, one acute module (No. 5), an admission module (No. 7) and an infirmary. Each residential module possessed its own decorated patio, communal facilities and workshops. Further, an additional “patio of oranges” and a football pitch were in use for the whole establishment. The establishment accommodated patients sentenced by courts from all autonomous communities of Spain with the exception of Andalusia, Extremadura and the Canary Islands, as well as the territories of Ceuta and Melilla, and was the only establishment for the treatment of female forensic patients.

Sevilla PPH¹¹³ is located within the perimeter of Sevilla I Prison complex in the vicinity of Torrepalma, 17 kilometres east of the city. It was accommodating 157 forensic male patients for a capacity of 174 places at the time of the visit. Out of these, 109 were deemed to be not criminally responsible, 25 partially criminally responsible, six on remand detention assessment, 16 with a commuted sentence into a measure and one sentenced prisoner was under assessment. The establishment replicates the architectural structure of a Spanish ordinary prison with four modules (Nos. 1-4), distributed radially around a central observation room and all sharing the same design in terms of communal rooms, courtyard and workshops. A spacious outdoor athletic field equipped with a football pitch, patio and garden was available for use by all patients. Module 2 served as both an acute and an admission module. The establishment accommodates primarily patients from Andalusia, Extremadura and the Canary Islands, as well as the territories of Ceuta and Melilla.

¹⁰⁸ Article 96 of the CC refers to “psychiatric institutions” without making direct reference to PPHs. Article 11, paragraph 2, of the Organic Prison Law makes reference to special psychiatric institutions. The functioning of PPHs is regulated by Articles 183-191 of the Prison Regulations (RP).

¹⁰⁹ I.e. 268 at Alicante PPH, 157 at Sevilla PPH and approximately 130 at PAIEM modules in various ordinary prison establishments.

¹¹⁰ The establishment had been inaugurated in 1984.

¹¹¹ In accordance with the relevant provisions of Article 104 of the CC.

¹¹² Pursuant to Article 101 of the CC.

¹¹³ The establishment had been inaugurated in 1990.

142. It should be noted in this connection that forensic mental health-care facilities are under the responsibility of the SGIP. The CPT is concerned about the lack of institutional and functional separation between these facilities and prisons, and its impact upon the ethos and approach prevailing in the forensic hospitals (see paragraph 150). **The Committee considers that forensic psychiatric establishments such as PPHs should enjoy full institutional and functional separation from the prison service in the light of the different ethos and staffing profile which characterise prison establishments. Preferably, in the CPT's view, PPHs should be under the responsibility of the national health-care system (*Sistema Nacional de Salud*). The Committee would like to receive the Spanish authorities' comments on this matter.**

143. In terms of preventive measures in the fight against the COVID-19 disease (see also paragraph 41), precautionary measures were in place at both establishments which consisted of: a quarantine period of 10 days for all new admissions in dedicated areas, the compulsory wearing of masks by staff and patients when involved in activities outside the module, family visits taking place with physical partitioning, the setting-up of video calls with families, the scanning of body temperature at the entrance to the establishment. Further, most of the workshops, occupational and educational activities at both establishments had been suspended and were just resuming at the time of the CPT visit. Alternative measures had been put in place at Sevilla PPH in order for teachers to send lessons to and receive assignments from patients online. No patient had been officially reported as having been infected by the Sars-Cov-2 virus since the outbreak of the pandemic.¹¹⁴

2. Ill-treatment

144. Patients interviewed by the CPT's delegation at both PPHs were, in general, positive about the way in which they were treated by staff. However, a few allegations of physical ill-treatment, notably of blows with rubber batons and of painful and inadequate immobilisation in order to contain very agitated patients, were received at both establishments. Further, injuries compatible with the alleged resort to excessive force were recorded in the relevant incident reports following examination by health-care staff.

In addition, through the examination of the relevant CCTV recording of the resort to means of restraint, the delegation uncovered one case of ill-treatment of a patient at Sevilla PPH. On 21 July 2020, this patient was subjected to slaps and punches by a member of the security staff both at the time of his restraint and during the mechanical fixation with straps to a bed in a fixation cell of module 2. Ten of the staff member's colleagues were present when this ill-treatment took place. Once informed, the Director of the Hospital reported the case to the SGIP. An internal investigation was initiated, the deputy director for security was dismissed for failing to report the incident and the matter was referred to the duty judge to consider the criminal aspects of the case. Further, by communication of 19 January 2021, the CPT was informed by the SGIP that disciplinary proceedings had been initiated in respect of the nine staff members who had witnessed the ill-treatment and who had failed to report it. **The CPT would like to receive an update on the status of the above-mentioned judicial investigation as well as of the disciplinary proceedings.**

¹¹⁴ The autopsy report of one patient who had died at Alicante PPH in March 2020 of cardiac arrest referred to Covid-19 as one of the possible causes of death.

The CPT recommends that the Spanish authorities reiterate to prison officers at Alicante and Sevilla Prison Psychiatric Hospitals that all forms of ill-treatment of patients, including the excessive use of force when restraining an agitated patient, are unprofessional and illegal and will be the subject to appropriate sanctions.

The CPT recommends that the tasks assigned to prison officers in the forensic mental health-care facilities, and the training provided to all staff in such facilities, be reviewed (see also paragraph 162 below).

145. Episodes of inter-patient violence were not infrequent at both establishments as indicated by the relevant incident and injury reports (*actos de hechos y parte de lesiones*), as well as testimonies of patients interviewed by the delegation. Such episodes mainly concerned agitated patients affected by possible treatment resistant schizophrenia who were frequently experiencing psychotic episodes and agitation due, among other things, to their resistance to the prescribed medication and who were prone to attack other patients, either in the patio or communal areas. In general, custodial staff reacted promptly to such incidents, patients were transferred to the respective acute module and detailed incident reports (including injuries sustained by patients and staff) were drawn up and forwarded to the competent supervisory judge.

3. Living conditions of patients

146. In its report on the 2003 periodic visit to Spain, the CPT had set out the minimum standards in terms of material conditions which should be offered to patients accommodated in forensic psychiatric institutions. These should involve first of all providing sufficient living space per patient, as well as adequate lighting, heating and ventilation, maintaining the establishment in a satisfactory state of repair and meeting general hygiene requirements. Attention should also be given to the decoration of patients' rooms and recreation areas. The provision of bedside tables and wardrobes is highly desirable, and patients should be allowed to keep certain personal belongings (photographs, books, etc.). It is also important that patients be provided with a lockable space in which they can keep their belongings; the failure to provide such a facility can impinge upon a patient's sense of security and autonomy.

Further, Article 191, paragraph 1, of the Prison Regulations (RP) stipulates that the design of PPHs must take into account factors, such as the therapeutic needs of patients and sufficient space for their rehabilitation activities must be provided. Metal doors of cells and horizontal metal bars on windows, which are in place in all modules of both PPHs, are clearly not conducive to the creation of a truly therapeutic environment and provide clear ligature points.

147. At Alicante PPH, patients in the four main residential modules were being accommodated in good-sized single (measuring some 10m²) or double cells (measuring some 13m²) and a few four-bedded cells (measuring approximately 22m²), which had satisfactory access to natural light and were well ventilated. Most cells were equipped with beds, tables, cupboards and chairs. That said, the in-cell sanitary annex was not fully partitioned. The CPT's delegation was informed that, in addition to the recent refurbishment of Module 1, steps were envisaged to install in-shower cells in the remaining modules.

The conditions in the 30 cells of the two-floor acute module were austere and cells were only equipped with beds fixed to the floor and floor-level toilets and possessed no locking space or decoration, making the environment rather impersonal for patients who could spend prolonged periods in the module.¹¹⁵ Communal areas in modules and outdoor facilities were adequately decorated and provided a relatively relaxing atmosphere. The CPT's delegation was informed that a 3.8-million-Euro refurbishment plan had been adopted for the renovation of all cells in modules 2 and 3. By letter received on 19 January 2021 the Spanish authorities informed the Committee of their plans to construct a brand new forensic psychiatric hospital in the area of Valencia which would imply the closure of Alicante PPH.

Although similar in design, the four modules of Sevilla PPH offered in general a more carceral and austere environment; two and four-bedded cells measuring respectively 10m² and 16m² were cramped and impersonal, lacking any type of decoration and were poorly furnished (i.e. only with beds and small cupboards and no lockable space or call-bell). Access to natural light was poor and artificial lighting was often malfunctioning in the cells. The communal areas located on the ground floor of the establishment, consisting of a recreational room/refectory, courtyards and workshops, were also impersonal, their design unmistakably carceral and cramped. This inevitably created a noisy and resonant environment, which was not contributing to the therapeutic rehabilitation of patients, considering that they were spending most time of the day outside of their cells. By letter received on 19 January 2021, the Spanish authorities informed the Committee of the plan to transfer the Sevilla PPH to the premises of the current female prison of Alcalà de Guadaira pending its refurbishment.

The CPT recommends that, pending the relocation of psychiatric patients to new establishments in Valencia and Alcalà de Guadaira, efforts be made to provide patients at Alicante and Sevilla PPHs with material conditions, which are conducive to their treatment and welfare. It might be recalled that this involves first of all providing sufficient living space per patient, as well as adequate lighting, heating and ventilation, maintaining the establishment in a satisfactory state of repair and meeting general hygiene requirements. Attention should also be given to the decoration of patients' rooms and recreation areas. The provision of bedside tables and wardrobes would be highly desirable, and patients should be allowed to keep certain personal belongings (photographs, books, etc.). It is also important that patients be provided with a lockable space in which they can keep their belongings; the failure to provide such a facility can impinge upon a patient's sense of security and autonomy.

Further, the CPT recommends that the Spanish authorities strictly comply with the above-mentioned principles in the course of the planned construction and refurbishment of the future forensic psychiatric establishments. It would also like to be informed of the precise timetable for the construction and entry into service of these new establishments.

148. At Alicante and Sevilla PPHs, several patients complained to the delegation that the food distributed to them in the respective refectories, which was generally sufficiently varied and nutritious, was served cold as it was delivered by the respective adjacent prison establishments.

The CPT recommends that the Spanish authorities ensure that the food provided to patients at Alicante and Sevilla PPHs is distributed at an adequate temperature.

¹¹⁵ Twelve patients were accommodated at the acute module of Alicante PPH under different measures such as seclusion, suicide prevention protocol and court-ordered assessment of mental health in the context of remand detention.

4. Treatment

149. As mentioned in paragraph 142 the philosophy behind the creation of PPHs is to provide security and custody to forensic patients and treatment towards their rehabilitation in co-operation with external actors in the community.¹¹⁶ In this respect, both establishments were striving to comply with the above-mentioned predicaments but those efforts were hampered in particular by the serious chronic understaffing in key positions (see paragraph 160), the carceral design of the premises and the prison-like regime. In particular, the CPT's delegation gained the distinct impression that the reinforcement of staffing levels, notably of psychiatrists, nurses and occupational therapists, at both PPHs would contribute to a better therapeutic environment and to relieving patients of the frustration of being mainly subject to pharmacological interventions.

a. mental health care

150. The philosophy of treatment of forensic patients accommodated in PPHs reflects the lack of institutional and functional separation between PPHs and ordinary prisons. Consequently, this has an impact upon the ethos and approach prevailing in PPHs. Therefore, it is not surprising that the treatment of forensic patients at both establishments consisted primarily of pharmacotherapy. The chronic lack of psychiatrists, psychologists, nurses and occupational therapists affected the level and quality of care provided to patients, resulting in little individualised treatment for patients. Further, the two PPHs did not have a specific specialised therapeutic focus in the differentiation of modules based on the diagnostic profile of patients, their age or length of security measure.¹¹⁷

The CPT considers that, in adopting the necessary change of approach of the carceral philosophy reigning in the PPHs, due consideration should be given to the level and quality of psychiatric care which is to be provided to patients in terms of a more individualised approach to their treatment. This consists of an assessment of the clinical needs as well as a risk assessment based on structured professional judgment and the identification of treatment targets in consultation with the patient and a multi-disciplinary approach. Further, preference should be given to individual and group cognitive-behavioural treatment programmes with a focus on problem solving and the development of interpersonal skills. **The CPT recommends that the Spanish authorities give serious consideration to a much-needed paradigm shift in the treatment of forensic patients based on the above-mentioned principles.**

151. The CPT's delegation gained the impression that patients accommodated at Alicante PPH did not appear to be over-sedated or suffer from serious side-effects. However, at Sevilla PPH, several patients showed clear signs of overmedication (i.e. slurred speech and uncontrolled movements) and 74% of patients¹¹⁸ were on regular benzodiazepine prescriptions which is unlikely to be justified on the basis of their diagnoses and presentation, given that benzodiazepines are primarily indicated in the treatment of anxiety disorders and insomnia.

¹¹⁶ As enshrined in Article 189 of the RP.

¹¹⁷ At Alicante PPH, module 2 was characterised informally by a more chronic profile whereas Module 3 tended to accommodate more conflictive patients. At Sevilla PPH there was no particular differentiation among modules with the exception of module 2 designated as acute and one wing of module 4 assigned to elderly patients.

¹¹⁸ I.e. 114 patients out of 158.

At both establishments, a wide range of newer generation anti-psychotic medication was available and medical charts were adequately drawn up and prescriptions periodically reviewed. Blood tests for clozapine treatment (20 patients at Alicante and 4 at Sevilla PPH) appeared to be regularly performed although records were not always clear in this respect. That said, the CPT's delegation found that a number of patients were prescribed high dosages of antipsychotic medication or combinations of more than one antipsychotic other than clozapine. This may be suggestive of a diagnosis of treatment resistant schizophrenia. In principle, international guidelines¹¹⁹ on the treatment of this condition recommend the use of clozapine as the most effective agent. In the CPT's view, the Spanish authorities should consider adopting this evidence-based guidance, bearing in mind the need for regular blood tests whenever patients are taking clozapine. **The CPT recommends that the Spanish authorities review the treatment being offered to patients with treatment resistant schizophrenia, in the light of the above remarks.**

152. In respect of emergency/rapid tranquillisation medication administered to patients in cases of emergency situations, this was acceptable but different practices existed at the two PPHs visited which call for the adoption of a uniform protocol at the national level.¹²⁰

As is largely the case in Spanish prisons, patients were able to continue and to start opioid agonist treatment (OAT) in a PPH. There were in this respect nine patients on methadone and six on suboxone treatment at Alicante and one patient on methadone and two on suboxone treatment at Sevilla PPH. Further, a high number of patients at both establishments were diagnosed with substance use and other mental disorder (i.e. 161 at Alicante PPH and approximately 115 at Sevilla PPH).

The CPT recommends that the prescriptions of regular anti-psychotic and benzodiazepine medications be reviewed at Sevilla PPH in the light of the comments above. Preferably, standard medication protocols for both regular and emergency medication of forensic patients should be adopted at the national level.

153. In the CPT's view, consent to hospitalisation and consent to treatment are two distinct issues and patients should be requested to express their position on both of these issues separately. As a general principle, all categories of psychiatric patients (i.e. voluntary or involuntary, civil or forensic, with legal capacity or legally incapacitated), should be placed in a position to give their free and informed consent to treatment. It is axiomatic that consent to treatment can only be qualified as free and informed if it is based on full, accurate and comprehensible information about the patient's condition, the treatment being proposed and its possible side-effects, as well as about the possibility to withdraw consent. Further, it is essential that all patients who have given their consent to treatment are continuously informed about their condition and the treatment applied to them and that they are placed in a position to withdraw their consent at any time.

¹¹⁹ See, for example the World Federation of Societies of Biological Psychiatry: Hasan A, Falkai P, Wobrock T, Lieberman, J, Glenthøj B, Gattaz WF, Thibaut F, Möller HJ & The WFSBP Task Force on treatment guidelines for schizophrenia (2012): "[World Federation of Societies of Biological Psychiatry \(WFSBP\) Guidelines for Biological Treatment of Schizophrenia, Part 1: Update 2012 on the acute treatment of schizophrenia and the management of treatment resistance](#)".

¹²⁰ At Sevilla PPH injections of haloperidol 10 mg, diazepam, clonazepam, olanzapine or aripiprazole were administered whereas at Alicante PPH emergency medication consisted of either olanzapine or haloperidol 10 mg alongside with biperiden (to counter the side-effects of the other drugs) and levopromazine 25 mg.

In addition, every patient capable of discernment should be entitled to refuse a particular treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances and should be accompanied by appropriate safeguards.

The great majority of the patients interviewed by the delegation at both establishments stated clearly that they could not object to their prescribed medication without facing consequences and it was clear that this constituted a source of frustration for them. Patients alleged that nursing and medical staff resorted to various dissuasive and intrusive methods in order to convince them to take their medication, such as threatening to take away certain benefits (such as outdoor exercise and therapeutic outings) or to transfer them to the acute modules or be accompanied by custodial staff as a form of intimidation. The head psychiatrist of Sevilla PPH made efforts to explain to patients the necessity of accepting medication in view of their rehabilitation. By contrast, medical staff at Alicante PPH were under the impression that the possibility of forcible treatment was enshrined in the court-imposed placement order for all forensic patients. By letter received on 19 January 2021, the Spanish authorities informed the Committee that the management of both PPHs had been clearly instructed to comply with the existing national patient rights legislation in terms of actively seeking the informed consent of patients when administering medication (see paragraph 168).

As to legally incapacitated patients (i.e. 17 at Alicante and 23 at Sevilla PPH), staff at Sevilla PPH in principle informed the respective guardians in respect of the administration of treatment. That said, at Alicante PPH, staff said that they did not actively resort to this practice. (see also paragraph 168)

The CPT recommends that the Spanish authorities introduce, in law as well as in practice, the requirement to request a second psychiatric opinion (i.e. from a psychiatrist not involved in the treatment of the patient concerned) in any case where a patient does not consent to the treatment proposed by the establishment's doctors. This should equally apply to those patients who are incapable of giving informed consent even if his/her guardian consents to the treatment as well as to those having capacity but not consenting). Further, patients should be able to challenge a compulsory treatment decision before an independent authority and they should be informed in writing of this right.

154. Individual Treatment Plans were in place for all patients at Sevilla PPH and for around 60% of patients at Alicante PPH. Such plans were revised in principle every six months and were the object of discussion between patients and staff prior to their adoption. The plans reviewed demonstrated that an individualised approach towards the rehabilitation of patients was taken, notably in terms of an accurate scaled evaluation of their behaviour, the objectives to be attained within a relevant timeframe, the offer of rehabilitative activities and the evaluation of any progress.

155. As regards psycho-social rehabilitative interventions, various group activities were in place at both Alicante and Sevilla PPHs, which were provided by the psychologist team present in the hospitals, as well as by external actors.¹²¹ That said, there was little evidence of individual interventions,¹²² and, despite the good will of treatment staff at both PPHs, the psycho-social interventions on offer were insufficient. The psychotherapeutic input at both PPHs appeared to be provided on an ad hoc basis and there was a lack of structured risk assessments of patients, as well as of treatment according to this risk and of targeted risk reducing interventions for specific patient groups and profiles.

As regards occupational therapy and education, various workshops¹²³ and school/educational classes¹²⁴ were slowly being reinstated at both PPHs following their suspension in March 2020 and the subsequent summer recess. A number of patients were involved in production and remunerated activities at both establishments, as well as vocational training.¹²⁵ Further, both establishments were equipped with adequate sports and recreational facilities (i.e. a football pitch and a fully equipped gym) which were available to patients on an almost daily basis.

The CPT recommends that further efforts be made to provide all patients at Alicante and Sevilla PPHs with a structured daily programme of therapeutic and rehabilitative activities, based on their individual needs and capacities. In this connection, consideration should be given to broadening the scope of the individual psychotherapeutic interventions in order to involve a higher proportion of patients and better suit the needs of the patients concerned.

156. As part of a graduated approach towards patients' rehabilitation in pursuance of Article 190 of the RP, the two establishments have developed programmes for offering patients therapeutic outings with staff, family or members of external organisations. Such outings might range from one day to three months and be offered to a group or an individual patient. Longer unaccompanied periods of leave as part of the process for progressing towards discharge may also be offered. Therapeutic outings are proposed by the multi-disciplinary team and approved by the supervisory judge. **The CPT welcomes these efforts and encourages the management of both PPHs to actively pursue this path in the future.**

¹²¹ A total of 84 patients (less than 30%) at Alicante PPH and 40 patients (25%) at Sevilla PPH were involved in group sessions on cognitive behavioural treatment, rehabilitation from drug and alcohol addiction, preparation for release, treatment of dual-diagnosis and social skills which in general were organised on a weekly basis.

¹²² I.e. around a dozen patients at each PPH were involved in individual psychotherapy.

¹²³ Gardening, ceramics, hairdressing, sewing workshops at Alicante PPH and gardening, marquetry and laundry at Sevilla PPH.

¹²⁴ Both establishments offered classes of primary and secondary education, Spanish for foreigners, English and computer skills.

¹²⁵ A total of 35 patients at Alicante and 25 at Sevilla PPH had a remunerated activity in maintenance works at the respective establishments. Further, vocational training funded by the European Social Fund was on offer at both PPHs on ceramic craftsmanship, gardening and food handling.

b. somatic health care

157. Article 209 of the RP provides that primary health care for forensic patients accommodated at the PPHs be provided by the SGIP and that specialised/secondary care by the health-care authorities of the respective autonomous community.

Newly arrived patients were screened within one day of admission at both establishments and the initial medical check-up included the recording and description of any injuries noted, together with any photographic evidence, an ECG, blood test and screening for HCV, HBV and HIV. Subsequently, all patients were subject to periodic blood tests every six months.

As is the case in ordinary prison establishments in Spain, anti-retroviral treatment for HIV-positive patients was regularly provided, as well as direct-acting anti-viral treatment (i.e. interferon-free) for HCV in accordance with the principle of equivalence of care.

The CPT's delegation gained in general a positive impression of the level of somatic health care provided to patients at both PPHs. Conditions at both infirmaries were adequate, where mainly elderly and bed-ridden patients were accommodated, and both establishments were equipped for the provision of palliative care. Conservative dental care was provided by visiting dentists and the medical records of patients in electronic format contained detailed notes on treatment and medication and were satisfactory.

158. In terms of specialised/secondary health-care, both establishments had good access to the local hospitals in the community and were regularly visited by specialists.¹²⁶ That said, neither of the PPHs were integrated into the electronic system of the local health-care authority which caused technical delays and impediments to the sharing of test results and prescriptions of patients in electronic format. **The CPT recommends that both Alicante and Sevilla PPHs be integrated into the electronic systems of the local health-care authorities.**

5. Staffing resources

159. The CPT considers that a prerequisite for enhancing the care and treatment of patients held in the two PPHs is the increase in the complement of psychiatrists, psychologists, nurses and occupational therapists. Both establishments had a significant number of vacancies in key positions which seriously hampered the provision of a high standard of psychiatric care based on a truly individualised approach.

160. At Sevilla PPH, there was only one full-time equivalent (FTE) psychiatrist out of five budgeted posts; support was provided by three psychiatrists on temporary contracts. In addition, there was one FTE GP out of four budgeted posts, eight FTE nurses, one FTE psychologist and two FTE occupational therapists.

¹²⁶ Such as ophthalmologists, trauma specialists and dieticians.

The situation was even more concerning at Alicante PPH, where there was effectively only one FTE psychiatrist¹²⁷ out of seven budgeted posts for 268 patients. In addition, there was one FTE psychologist out of four budgeted positions and one occupational therapist out of six budgeted positions and seven FTE nurses. Such low staffing levels had a serious impact on the provision of care to patients. Further, psychiatrists at both establishments were burdened by the task of preparing psychiatric assessments to the competent judicial authorities.

The CPT recommends that the Spanish authorities take urgent steps to increase the staffing levels at both Alicante and Seville PPHs. In particular, the presence of psychiatrists, psychologists and occupational therapists should be increased as a matter of urgency.

161. The CPT is further concerned about the conspicuous permanent presence of a significant number of prison officers at the two mental health-care facilities. At Alicante, there was a complement of 66 prison officers and at Seville, 63 prison officers. In the CPT's view, such a state of affairs is unacceptable for a psychiatric establishment, for both patients and staff. The provision of a proper therapeutic care environment requires properly trained staff capable of working with persons who are mentally ill; prison officers are not trained for carrying out such an onerous task (see also paragraph 144). **The CPT recommends that the Spanish authorities replace a significant number of prison officers by nursing staff with specialist training at both Alicante and Sevilla PPHs.**

162. The CPT has stressed on different occasions the importance of targeted training being offered to staff working in forensic hospitals in the light of the particular profile of patients accommodated therein. In this respect, the training offered to newly recruited staff (both custodial and treatment staff) at both PPHs was the same as for the other staff employed in ordinary prison establishments. General training modules included aspects related to dealing with patients with mental disorders and de-escalation issues. That said, both PPHs had adopted their own ad hoc training courses for newly recruited staff with a specific focus on the challenges of dealing with psychiatric patients, de-escalation techniques and manual control of agitated patients.

The CPT recommends that the SGIP adopt specific training modules for staff assigned to work in PPHs, focusing in particular on modern principles of forensic psychiatry such as risk assessment, treatment environments for forensic patients and the effectiveness of psychological and pharmacological interventions.

¹²⁷ A second psychiatrist was on extended sick leave and a third one was about to retire.

6. Seclusion, means of restraint, and suicide prevention

163. Article 188 of the RP regulates the restrictions of liberty applicable to patients in the light of their status as well as the application of means of restraint (such as the use of physical force including rubber batons, seclusion and mechanical fixation).¹²⁸ Such means of restraint must be ordered by members of the health-care and security staff, in compliance with the principles of necessity, proportionality and residuality. Further, the application of any means of restraint on patients must be properly recorded and promptly communicated to the competent supervisory judge for endorsement. As to the execution of mechanical fixation of patients, the same Instruction 03/2018 of the SGIP in use in ordinary prisons is applicable (see paragraph 39).

164. At Alicante PPH there was a moderate resort to means of restraint such as seclusion and mechanical fixation in respect of agitated patients in response to episodes of violence such as physical altercations with other patients, self-harming etc. (i.e. 11 fixation measures in 2018, 16 in 2019 and 5 in 2020; one seclusion measure in 2018, 18 in 2019 and 13 in 2020).¹²⁹ All measures had been ordered by the psychiatrist or GP and often patients received rapid tranquillisation medication without consent in the course of the incident. The seclusion measure was enforced in one of the cells of the acute module equipped with a metal bed attached to the floor and floor-level toilets and wash basins. During the serving of the measure, patients were provided with daily outdoor exercise in the attached courtyard or the module of origin. There were three cells equipped with metal beds of different sizes and CCTV and audio recording where the fixation measure was executed in compliance with Instruction 03/2018 (i.e. elevated mattress, patient placed in a face-up position) and physical checks were performed by staff every 30 minutes.

At Sevilla PPH, the resort to means of restraint such as seclusion and fixation measures was higher as was their duration (29 fixation measures in 2018, 19 in 2019 and 17 in 2020; 74 seclusion measures in 2018, 53 in 2019 and 60 in 2020).¹³⁰ They were carried out in two cells on the ground floor of acute Module 2, from where patients had direct access to a dedicated courtyard. One of the cells was being repainted and the floor repaired at the time of the visit. Several patients told the delegation that they had been fixated for punitive rather than therapeutic reasons; for example, for disciplinary offences such as stealing objects or for refusing treatment. Further, they stated that they had been forcibly injected without their consent and without being provided with a clear justification. The review of several video-recordings of fixation of patients revealed that the principles of Instruction 03/2018 were respected in terms of the position of fixation and visual checks performed by staff. That said, in one case mentioned in paragraph 144, the whole episode of manual control of a mildly agitated patient was not handled professionally and one prison officer punched the patient several times after he had been fixated. Further, several other patients alleged that staff did not respond to their requests to be released in order to comply with the needs of nature (forcing them to wet and soil themselves), that they had been restrained in underwear and that they had been forcibly medicated while fixated.

¹²⁸ Pursuant to Article 45 of the 1979 Organic Prison Law.

¹²⁹ The maximum duration of fixation measures in the course of 2020 amounted to 11 hours.

¹³⁰ The maximum duration of a fixation measure applied at Sevilla PPH in the course of 2020 amounted to two days and on three other occasions it had been applied overnight.

Further, a number of patients who were displaying challenging behaviour were subject to prolonged restrictions of liberty in compliance with Article 188, paragraph 2 of the RP. The patients were separated from other patients and only offered one hour of outdoor exercise in a dedicated courtyard of an oppressive design.¹³¹ They did not participate in any rehabilitation activities. The management of Sevilla PPH told the delegation that the competent supervisory judge was regularly informed of the application of the measure of limitation of liberty as a courtesy measure although there was no legal obligation as the measure was not a means of restraint. The delegation concluded that the imposition of those measures for such a prolonged period without legal safeguards for the patient, open-ended duration or inadequate judicial review might have deleterious effects for the patients. For example, one patient met had spent almost four months under such a restrictive measure (i.e. from 1 October 2019 to 20 January 2020) without any contact with other patients and being granted one hour of daily outdoor exercise alone in the attached courtyard. By letter received on 19 January 2021, the Spanish authorities informed the Committee that psychiatrists at both PPHs had been instructed to observe a more stringent scrutiny over the prolonged restrictions of liberty applied to patients pursuant to Article 188, paragraph 2, of the 1996 Prison Regulations.

The CPT considers that resort to mechanical fixation of forensic patients at Sevilla PPH retained punitive elements in some instances, and could be coupled with the infliction of physical ill-treatment of patients, forced medication and prolonged periods of fixation with denial by staff of a patient's request to use a toilet; cumulatively these elements may well amount to inhuman and degrading treatment.

The CPT recommends that the Spanish authorities ensure that the management of Sevilla PPH take urgent steps to comply with the principles outlined in paragraph 85 when applying a measure of fixation to a bed of a patient.

165. In terms of the recording and judicial review of the measures of means of restraint applied to patients pursuant to Article 188, paragraph 3, of the RP, incident reports together with the relevant medical documentation were regularly brought to the attention of the competent supervisory judges in a timely manner at both PPHs. That said, as has been the case in the past, the judicial review consisted in principle of a standard reasoned approval of the necessity of complying with the principles of proportionality in applying restrictive measures to patients and endorsing its application. Further, most of the decisions of the supervisory judges examined by the delegation were issued up to five weeks after the application of the means of restraint. In the CPT's view, a judicial review of several weeks *a posteriori* of the application of an intrusive restraint measure in respect of an agitated forensic patient based on a written procedure does not serve the purpose of safeguarding the rights of the person in question.

The CPT's delegation gained the impression that the role played by the supervisory judges remained merely one of rubber-stamping the decisions of the prison administration. There appeared to be no examination of the proportionality and appropriateness of the measures by the supervisory judges.

¹³¹ The courtyard (40 m²) was surrounded by a four-metre high concrete wall and possessed no means of rest or shelter from the rain or sun.

The CPT recommends that the Spanish authorities reiterate to supervisory judges the importance of their role as an impartial and independent control of practices in PPHs and not a rubber-stamping authority. In particular, the Committee requests that the Spanish authorities transmit this recommendation through appropriate channels to the Inspection Services of the State Judicial Council (*Consejo General de Poder Judicial*). Further, meetings between patients and the competent supervisory judge should always take place in private.

166. A State owes a duty of care towards all persons it deprives of their liberty. In respect of involuntary psychiatric patients, this duty of care calls for effective measures to prevent patients from causing themselves harm. Failure by the authorities to identify persons at risk of suicide, or to deal adequately with those identified as being at risk, would constitute therapeutic neglect. At both PPHs, Instruction 05/14 on the suicide prevention programme (PPS) was in place and applied in respect of the observation of all newly admitted patients, as well as those assessed to be at risk of suicide. It consisted in the placement of a patient in a room under CCTV surveillance and the application of a set of limitations to be decided ad hoc by the GP/psychiatrist.¹³²

At Alicante PPH, two suicides by hanging had taken place in 2020 during the COVID-19 lockdown period when rehabilitation activities had been interrupted and at Sevilla PPH, a patient had committed suicide by hanging during his placement under a PPS protocol. In the delegation's view, the fact that the rooms in both establishments possessed horizontal bars on windows was the primary source of concern in terms of suicide risk, in addition to the lack of staff highlighted above.

Further, the CPT's delegation retained serious concerns in respect of the fact that patients were in some cases deprived of their clothes as well as bedsheets while being placed under the PPS protocol at both establishments, and no anti-rip clothing and sheets were at their disposal. By letter received on 19 January 2021, the Spanish authorities informed the delegation that anti-rip thermal blankets and gowns had been supplied to both PPHs for the purpose of providing them to patients placed under a suicide prevention protocol.

The CPT welcomes this development and recommends that the Spanish authorities take action to remove horizontal bars in place in front of each cell window at both Alicante and Sevilla PPHs.

¹³² Such as e.g. periodic visual checks of custodial staff, withdrawal of ignition sources and other personal items, keeping the metal door of the cell open and the grilled door closed.

7. Safeguards

a. involuntary placement and discharge

167. As mentioned in paragraph 140, security measures of placement in a PPH are subject to a review on an annual basis by the sentencing court pursuant to Article 98 of the CC.¹³³ To this end, the multi-disciplinary teams provide periodic reports on the status of the patient in question proposing the maintenance, suspension or levy of the measure. The minutes of the meetings of the multi-disciplinary teams and the personal file indicated that this was regularly done at both establishments and reports were accurately drafted and sent in a timely manner to the competent sentencing judicial authority through the supervisory judge and prosecutorial authorities in compliance with Article 98 of the CC. The personal files of patients examined by the CPT's delegation at both PPHs contained the written correspondence related to the periodic review of the security measure of placement in a PPH. In practice, the sentencing courts scrutinised the reports of the PPHs and generally agreed with their proposals and issued a reasoned decision which was communicated to the establishments through the competent supervisory judge. The legal representative was involved and avenues of appeal to a second instance tribunal were in place.¹³⁴

That said, the patients were not heard in person and they appeared to be unaware of the content of the whole process (in terms of information on the content of the periodic reports as well as on the outcome of the judicial decisions). Further, there was a possibility in theory to initiate the revision of the measure outside of the legal deadlines although this was not often explored in practice.

As concerns possible discharge from a PPH, the legislation also provides, in addition to the cessation of the security measure, for the possibility of forensic patients to be committed to a civil psychiatric hospital or a treatment institution in the community close to their place of residence.¹³⁵ This possibility was in some cases actively explored and executed, in particular at Alicante PPH.

The CPT recommends that the authorities ensure that the need for continued placement in prison mental health-care facilities is the subject of regular substantive reviews. The patient should be informed in writing of the outcome of these reviews; if the patient concerned agrees, such information should also be provided to his/her lawyer or other representative.

¹³³ Pursuant to Article 98 of the CC, the competent supervisory judge must initiate a review of the security measure at least on an annual basis in the light of the reports drawn up by the multi-disciplinary team of the PPH. The review is then performed by the sentencing court which must issue a reasoned decision after having heard the person subject to the measure and the public prosecutor.

¹³⁴ I.e. *Audiencia Provincial*.

¹³⁵ In compliance with Article 763 of the CCP.

b. involuntary treatment

168. The framework surrounding the involuntary treatment of psychiatric patients is regulated by Article 9, paragraph 2 of the Law on Patients No. 41/2002 of 1 November 2002 pursuant to which the informed and active consent of patients must be sought before administering medication, except in emergency situations.¹³⁶ As mentioned in paragraph 153, this was not the case at either Alicante or Sevilla PPH where the majority of patients were being coerced to take medication by staff. The director of Alicante PPH shared his opinion with the delegation that without forced medication the establishment could not be easily managed and kept in good order. In practice, the CPT's delegation was only able to find one judicial decision authorising forced treatment of a psychiatric patient at Sevilla PPH, which indicated that the resort to judicial scrutiny was not actively sought.

As to legally incapacitated patients (i.e. 17 at Alicante and 23 at Sevilla PPH), staff at Sevilla PPH were in principle informing the respective guardians in respect of the administration of treatment. That said, at Alicante PPH, staff claimed that they did not actively resort to such a practice. The delegation was not able to find proof in the personal files of written consent given by guardians to that effect and it appeared that consent was being given only verbally or that the staff would content themselves to inform the guardians in writing as a courtesy measure.

The Committee takes note of the instructions sent to the management of both PPHs instructing them to comply with the relevant provisions of the Law on Patients No. 41/2002 when seeking the consent of forensic patients to their treatment.

The CPT recommends that the management of Alicante and Sevilla PPHs strictly comply with the principles outlined in paragraph 153 in relation to the current practice of coercing patients to accept medication. In this respect, the provisions of the Law on Patients No. 41/2002 should be strictly complied with in practice, also in respect of forensic patients subject to a security measure.

Further, the Committee would like to receive information on the new procedures put in place at both PPHs in terms of training proposed for professionals, standardised information leaflets on the proposed treatments and consent forms to be signed by the patients. As regards legally incapacitated patients, the consent of guardians in respect of the prescribed medication should always be systematically sought and recorded in writing in respect of all interventions.

¹³⁶ Article 9, paragraph 2, of the Law on Patients allows for forced treatment of a patient, inter alia: “.....and it is not possible to get your authorization, consulting, when circumstances permit, their families or persons linked done to him.”

8. Other safeguards

a. patients' contact with the outside world

169. As mentioned in paragraph 143, there were limitations in place to the patients' visits at both establishments as well as to the therapeutic outings in the light of the ongoing COVID-19 pandemic. The visiting premises at both establishments were adequate, clean, equipped with tables, chairs and sofas and offered a pleasant and relaxing atmosphere. At Sevilla PPH, visits with families were taking place in a garden patio in the outdoor facility in order to comply with the epidemiological restrictions. Further, access to telephone was satisfactory at both PPHs (i.e. ten calls of unlimited duration per week to a list of approved contacts).

b. inspections and monitoring

170. Both PPHs were being regularly visited by staff of the competent supervisory courts who met with patients in private and discussed relevant issues surrounding their detention conditions and treatment. Both establishments kept records of such visits.¹³⁷ The SGIP had also conducted several institutional inspections of the PPHs and reports were shared with the management of the establishments.

The Spanish NPM had conducted a visit to Sevilla PPH in the course of 2018, outlining several recommendations in relation to the carceral design of the establishment, the overall state of hygiene and cleanliness and the lack of targeted training activities of staff in dealing with psychiatric patients. The management of the establishment had acted upon some of them in terms of improvements to the hygienic conditions in common showers and sanitary facilities.

c. complaints mechanisms (patients' representatives)

171. The right of patients to file complaints to judicial authorities and other independent bodies (e.g. the Spanish Ombudsman) is regulated by Article 76 of the General Organic Prison Law. Such avenues were available at both establishments from the registers (electronic and hard copy) examined by the delegation. That said, it appeared that some of the complaints filed by patients in a psychotic state were simply archived by the supervisory courts and no feedback was provided to patients. Further, there was no patients' representative mechanism at any of the establishments.

The CPT recommends that the Spanish authorities take steps to instruct the competent supervisory courts covering Alicante and Sevilla PPHs of the necessity to provide a written acknowledgment to patients about their complaints even when their content and subject matter appears to be clearly ungrounded.

¹³⁷ For example, at Alicante PPH, the supervisory judge was visiting the establishments on a weekly basis and holding auditions with around a dozen patients each time.

d. provision of information to patients

172. At Sevilla PPH an information brochure had just been developed by the management of the establishment which was handed to patients upon admission or in the case of acute disturbance after their stabilisation by educators. The brochure in question contained basic information on the house rules, regime and various aspects of daily life at the PPH. Further, information sheets on the rights and duties of patients were displayed in the common areas of the establishment. These related in particular to issues of good order of the establishments and of basic rights in accordance with the applicable legislation. That said, among the duties of patients enlisted was the obligation to take the prescribed medication (see paragraph 153). Finally, at Alicante PPH no information brochure for newly admitted patients was in place at the time of the visit.

The CPT recommends that an information brochure, available in an appropriate range of languages, setting out the facility's routine and patients' rights – including information on legal assistance, review of placement (and the patients' right to challenge this), consent to treatment and complaints procedures – be drawn up and issued to all patients on admission, as well as to their families. Patients unable to understand this brochure should receive appropriate assistance.

D. Juvenile Detention Centre “La Marchenilla” in Algeciras

1. Preliminary remarks

173. In the course of the 2020 visit, the delegation visited the juvenile detention centre (*Centro de Menores*) “La Marchenilla” in Algeciras under the responsibility of the Andalusian regional authorities (*Junta de Andalucía*) and was managed by a private contractor (GINSO).¹³⁸ Particular attention was paid to the resort to means of restraint of juveniles as well as to various security and separation measures applied to them.

174. The general legal framework has not changed since the 2016 periodic visit.¹³⁹ Pre-trial detention measures may last up to nine months and the maximum length of a detention measure may last up to five years (for juveniles aged between 15 and 16) and eight years (if they are aged between 16 and 17)¹⁴⁰ and *centros de menores* in principle accommodate juveniles from the age of 14 (and they may remain in these centres until they reach the age of 25).¹⁴¹

175. The juvenile detention centre “La Marchenilla”, inaugurated in 2002, is located on the coastline overlooking the Gibraltar strait, around seven kilometres south-west of the city of Algeciras. At the time of the visit the centre accommodated 89 male juveniles (25 on remand detention and 69 sentenced)¹⁴² for an overall capacity of 112 places. The average age of the population was 17 years and the longest placement was three years. The establishment consisted of twelve autonomous residential modules housed in four two-storey buildings. There were three therapeutic modules and one module for the enforcement of separation and security measures (called the special security residential zone or “ZRECS”).

176. The COVID-19 pandemic had prompted the management of the establishment to introduce the following measures: compulsory PCR tests for all new arrivals and a 14-day quarantine period in a dedicated module, limitation and suspension of weekend leave and outings, increased resort to parole by juvenile courts, creation of bubble groups of juveniles in the different living units/modules. Further, all workshops, educational and recreational activities, as well as leave, had been suspended from March until the end of May 2020, affecting the mental condition of certain juveniles (see paragraph 192). One newly admitted juvenile, as well as two members of staff, had tested positive since the outbreak of the pandemic.

¹³⁸ GINSO (Association for the Management of Social Integration) is a non-profit Spanish organisation which manages three juvenile detention centres in the region of Andalucía, as well as a number of therapeutic and educational establishments across Spain.

¹³⁹ See in particular paragraph 100 of the CPT’s report on the 2016 periodic visit to Spain (CPT/Inf (2017) 34).

¹⁴⁰ Pursuant to Article 10, paragraph 1 of the Organic Law 5/2000 on the Criminal Responsibility of Juveniles.

¹⁴¹ If they have committed a criminal offence before the age of 18. In exceptional cases in relation to various offences or for having committed multiple offences juveniles might be detained in a *Centro de Menores* up to the age of 28 years.

¹⁴² Five juveniles were on a court approved leave at the time of the visit.

2. Ill-treatment

177. The majority of juveniles spoke positively of the way in which they were treated by staff at the centre. The CPT's delegation gained a positive impression of the caring attitude of the support staff (namely educators, module co-ordinators, and psychologists) who showed a real commitment to restorative justice, an individual approach towards the treatment of the juveniles and who were actively promoting a sense of community within the living units.

That said, several juveniles who were deemed to have disrupted the good order of the centre (through acts such as self-harming, damaging property, violence towards staff and other juveniles) complained about the rough behaviour of the private security guards¹⁴³ when being restrained (see paragraph 184). The medical documentation in the relevant incident reports supported the allegations of rough control and restraint interventions and of tight handcuffing of the juveniles. For example:

- i) A juvenile alleged that on 2 November 2019, following a psychotic episode in his cell during which he had tried to punch the coordinator of module 4, four security guards had immobilised him. He alleged that one security guard had slapped him and twisted his arms in order to handcuff him while another guard had placed his boots on his head as he lay on the floor of his cell. The medical certificate drawn up by the GP at the outset of the subsequent fixation measure described the injuries as: *"contusion of the inferior lip, superficial erosion of the internal side of the left arm, contusion of the internal side of the right arm and erosion on the left shoulder"*.
- ii) A juvenile who had apparently flooded his cell on 9 September 2020 and was verbally abusive to staff, alleged that he had been immobilised by four security guards and handcuffed tightly. He was transferred to the ZRECS where he remained handcuffed for one and half hours. The medical certificate drawn up after the cessation of the measure by the GP contained the following entry: *"erosions in the wrists and forearms due to the prolonged application of handcuffs"*.
- iii) A juvenile, who was behaving aggressively towards staff while having a verbal altercation during a Covid-19 swab test in the visitor's area on 24 April 2020, was injured when he was restrained by four security guards.¹⁴⁴ The injury report drawn up by the GP after his examination at the ZRECS module contained the following entry: *"physical restraint has been applied to the juvenile and during the struggle a contusion of the right knee is produced as well as a punctiform one on the right temporal part of the head"*.

¹⁴³ As mentioned in paragraph 195 there were 45 "vigilantes" from a private security company deployed to the establishment at the time of the visit.

¹⁴⁴ The juvenile in question had allegedly thrown a noticeboard on the ground and insulted staff.

178. The Committee recalls the importance of ensuring that any physical interventions by security guards are strictly necessary and proportionate. The use of physical force should be highly exceptional and deployed only if every effort to de-escalate a situation verbally has proved ineffective. To this end, security guards must be properly trained in non-pain compliant control and restraint techniques (i.e. manual control) so as to be in a position to choose the most appropriate response when confronted by difficult situations, thereby significantly reducing the risk of injuries to both young people and staff. Moreover, such skills will complement and reinforce the confidence of security guards in interacting with young people. Further, a member of the establishment's management team should always be present during the use of means of restraint.

The CPT recommends that the Spanish authorities reinforce the oversight of the activities of the security guards at “La Marchenilla” juvenile detention centre. Further, a clear message should be delivered to security guards to use only the minimum force required if it is exceptionally necessary to physically restrain agitated juveniles. Adequate initial and refresher certified training on the application of de-escalation measures and appropriate manual control techniques must be provided to all security guards operating at “La Marchenilla” juvenile detention centre.

179. Episodes of inter-juvenile violence were not frequent among the juveniles and the permanent presence of two educators on each module contributed to the prevention and containment of those incidents. Further, the management of the centre undertook ongoing assessments of the juveniles to try and avoid incompatible placements in the same module (see paragraph 192).

3. Conditions of detention

a. living conditions

180. The centre offered good conditions of detention in terms of the state of repair and hygiene in the residential and therapeutic living units. Juveniles were in principle accommodated in single rooms which were adequately furnished (possessing a bed, table, shelving unit, call-bell, TV and a sanitary facility).¹⁴⁵ All residential units also included communal facilities equipped with sofas, TV sets, table-tennis and snooker tables. Each module had access to workshops and a dedicated courtyard equipped with football and basketball hoops. In particular, the efforts invested by the management of the centre in order to ensure the adequate maintenance of rooms, communal facilities sports facilities, swimming pool and workshops were laudable. Further, it was positive that the management requested and acted upon feedback and requests from the juveniles regarding the menu and food.

¹⁴⁵ Sanitary annexes consisted of a wash basin and toilet. Further, two modules also had in-cell showers, whereas for the rest of the establishment, common shower facilities were in place.

The individual rooms offered between 7m² and 11.5m² excluding the semi-partitioned sanitary annexe. However, the Committee considers that the overall carceral environment and design in the residential modules is not appropriate for the juvenile residential population, given the rehabilitative aim of the centre. The horizontal metal bars on the windows, the reinforced metal cell doors with hatches, the sliding metal gates within the residential units, the metal beds fixed to the floor and the metal toilets in the cells were manifestations of the carceral environment. In the communal areas, sofas and chairs were fixed to the floor and TV sets encased in anti-vandal metal stands. Alternative solutions to furnishing rooms and communal areas with, for example, heavier soft furnishings would be much more appropriate. By communication of 19 January 2021, the Spanish authorities¹⁴⁶ informed the CPT that efforts would be invested to render the centre less carceral.

The CPT recommends that, in addition to “La Marchenilla” Juvenile Institution, the Spanish authorities act to render all juvenile detention centres in Spain less carceral. In particular, in the residential living units, the metal bars across the bedroom windows should be removed, and the fixed metal furniture and reinforced metal doors replaced.

b. regime

181. The living units were differentiated according to the individual risk assessment of each child from the phase of observation to development to consolidation.¹⁴⁷ Further, the two separate therapeutic modules offered targeted interventions for juveniles with mental disorder, including substance abuse disorder.¹⁴⁸

Generally, the CPT’s delegation gained a very positive impression of the regime and range of activities on offer to the juveniles. Juveniles were offered up to four hours of outdoor exercise per day in the form of leisure time in the courtyards¹⁴⁹ and had access to a wide range of socio-educational,¹⁵⁰ occupational,¹⁵¹ production/remunerated,¹⁵² vocational,¹⁵³ educational¹⁵⁴ and recreational activities.¹⁵⁵ The numerous and varied staff resources (see paragraph 195) ensured a truly individualised approach and showed an undeniable commitment to the restorative aspect of juvenile justice and their rehabilitation. Individual treatment plans, initial and periodic reports to the courts which were drawn up by a multi-disciplinary team, together with the juvenile and reviewed on a three-month basis, appeared to be detailed, produced on time and were evidence of the support staff’s professionalism.

¹⁴⁶ I.e. the Directorate for Juvenile Justice and Co-operation of the *Junta de Andalucía*.

¹⁴⁷ The multi-disciplinary team was in charge of the individual assessment of juveniles and their advance from one stage of treatment to the next, which implied better benefits in terms of recreational activities and leave.

¹⁴⁸ None of the juveniles was under a court-imposed therapeutic measure. Placement in a therapeutic module was subject to a risk assessment and diagnosis by the socio-educational commission.

¹⁴⁹ Further, a swimming pool was accessible during the summer.

¹⁵⁰ I.e. development of social skills, sex education, prevention of gender-based violence, coping with new technology-related addictions, debates on current affairs, etc.

¹⁵¹ Ceramic, graphic, recycling and gardening workshops were on offer and each was staffed by a permanent dedicated occupational therapist.

¹⁵² In co-operation with a private enterprise, a small repair workshop was operating within the establishment in view of future employment upon release.

¹⁵³ In particular, hairdressing, cooking and food production.

¹⁵⁴ Six fully employed teachers guaranteed primary and secondary education classes (up to high-school degree) as well as courses on computer science, Spanish for foreigners and English.

¹⁵⁵ Juveniles had in principle access to a fully equipped gym twice a week, as well as various sports activities and tournaments (e.g. football, basketball, table-tennis and video games competitions).

Further, ample resort was made to the juvenile's leave and outings of various durations and types¹⁵⁶ which the competent juvenile courts regularly approved. The level of activities and regime were so ample that it was not surprising that their withdrawal during the lockdown period between March and May 2020 had caused several episodes of frustration and aggressiveness among the juvenile population.

4. Use of means of restraint

182. In February 2020, one of the leading Spanish daily newspapers had published a video recording of an 18-year-old being fixated to a bed in the *Centro de Menores* of Tierras de Oria;¹⁵⁷ the young adult subsequently died of heart failure, allegedly as the result of the application of means of restraint.¹⁵⁸ On 17 June 2020 during a debate in Parliament, the Spanish Ombudsman called for the abolition of the measure of fixation for juveniles at all *centros de menores* in Spain.¹⁵⁹

183. At the time of the visit, the Andalusian regional authorities had adopted a new Instruction 02/2019 which had introduced certain additional safeguards drawn from the Spanish NPM "Best Practice Guide on the Use of Mechanical Fixation in a Prison Setting" mentioned in paragraph 85.¹⁶⁰ The main elements consisted of:

- 1) differentiation between "reduced" (handcuffing) and, where the juvenile continued to be agitated, "prolonged" mechanical fixation to a bed with cloth-straps;¹⁶¹
- 2) periodic checks every 30 minutes by a doctor;
- 3) staff to be constantly present in the cell in addition to monitoring via CCTV;
- 4) a reasoned decision to be documented on the necessity to extend the measure every 30 minutes by both the senior management of the centre and a doctor.

Further, staff in charge of the application of the measure should receive specific training on de-escalation measures and verbal communication.

¹⁵⁶ Leave could be of an ordinary nature, a weekend with the family or therapeutic outings with staff in order to attend a targeted psycho-social activity.

¹⁵⁷ The establishment in question had been visited by the CPT in the course of the 2016 visit and the Committee had recommended the abolition of the measure of mechanical fixation at the national level. See in this respect paragraph 131 of the CPT's report on the 2016 periodic visit to Spain CPT/Inf (2017) 34.

¹⁵⁸ The competent judicial authority later declared that the nature of the death of the young adult had been of an accidental nature.

¹⁵⁹ It is important also to note that another juvenile of foreign nationality died of cardio-respiratory failure following a fixation measure in a juvenile centre of Melilla in December 2017 (i.e. after the 2016 periodic visit).

¹⁶⁰ Mechanical fixation had been imposed 1,117 times on juveniles accommodated in one of the 29 centres under the authority of the Andalusian regional authorities in the timeframe ranging from 1 January 2017 to 31 August 2020.

¹⁶¹ As in the case of adult prisoners the position of the fixated juvenile must be face-up and the bed inclined between 30 and 70 degrees.

184. The means of restraint measure had been applied to juveniles in the centre on 92 occasions during the first nine months of 2020 (i.e. up until 26 September 2020), of which 24 were prolonged mechanical fixation and 48 reduced fixations.¹⁶² The measure of mechanical fixation had been applied to 24 different juveniles. The maximum durations recorded were two hours for handcuffing and up to eight hours for mechanical fixation. The measure was being applied to juveniles displaying agitated and aggressive behaviour towards staff or committing acts of self-harm.

The delegation examined a number of CCTV recordings of the recent application of reduced and prolonged mechanical fixation measures. The video and audio recordings showed that after the escort of a juvenile to one of the two fixation cells located in the ZRECS, a member of the support staff (i.e. educator or co-ordinator of the module) would try to verbally engage with the juvenile to de-escalate his behaviour. The recordings showed that the attitude of support staff was empathic and professional, especially in the light of the physical and verbally aggressive behaviour displayed by some of the juveniles. In case of persistent aggressiveness, the juvenile could be fixated by five points to the bed with the help of up to five security guards. In terms of supervision, the educator of ZRECS module remained present during the execution of the measure and the doctor would visit every thirty minutes. The competent juvenile court was notified of the application of the means of restraint immediately after its start. The dedicated register on means of restraint contained detailed notes of treatment and health-care staff on the mental and physical status of the juvenile as well as a reasoned description of the necessity of the measure and its prolongation after the failure of de-escalation attempts.

That said, the CPT's delegation also found that juveniles continued to be forcibly injected while handcuffed or mechanically fixated, that, in some cases, the duration of the measure remained excessive and that juveniles were not debriefed after the end of the measure. Further, juveniles diagnosed with a mental disorder were also subjected to mechanical fixation (i.e. 17 "reduced" and four "prolonged" measures of mechanical fixation).

The delegation also found that in the case of the imposition of a temporary isolation measure for security reasons pursuant to Article 55 of the Royal Decree 1774/2004, the mattress would be withdrawn from the cell during the day.¹⁶³

185. The CPT considers that fixating juveniles to a bed or handcuffing them in an isolation cell constitutes a disproportionate use of force. It is also a measure which is incompatible with the philosophy of an educational centre which should focus on the education and social re-integration of juveniles into the community. The Committee's objections are all the more acute when the restraint is applied to juveniles as young as 14 years' old or to juveniles suffering from a mental disorder. Further, another deficiency related to the fact that juveniles are sometimes subject to prolonged restraint beyond a couple of hours.¹⁶⁴

In the CPT's opinion, the use of means of restraint under these circumstances may amount to inhuman and degrading treatment.

¹⁶² The remaining 20 being measures of provisional isolation.

¹⁶³ In the course of 2019, the Andalusian Children Ombudsman had criticised the systematic withdrawal of the mattress from juveniles subject to a disciplinary measure of solitary confinement and the management of the establishment had complied with this recommendation. That said, such practice persisted in respect of juveniles placed in temporary isolation as security measure in a cell of the ZRECS module.

¹⁶⁴ In respect of 11 out of 24 prolonged mechanical fixation measures enforced in the course of 2020.

186. The CPT considers that in educational centres, the use of mechanical fixation and of handcuffing as a means of restraint of violent and/or agitated juveniles should be ended forthwith. Instead, alternative methods of managing violent incidents, such as verbal de-escalation techniques and manual control, should be employed; this will require staff, especially custodial officers, to be properly trained and certified at regular intervals on their use. Further, individual alternative measures to prevent agitation and to calm down juveniles should be developed. It is axiomatic that any force used to bring juveniles under control should be kept to the minimum required by the circumstances and should in no circumstances be an occasion for inflicting pain, whether deliberate or due to staff being inadequately trained.

In the event of a juvenile acting in a highly agitated or violent manner, the person concerned should be kept under close supervision in an appropriate setting (e.g. a time-out room). In the case of agitation brought about by the state of health of a juvenile, staff should request medical assistance and follow the instructions of the health-care professional (including, if necessary, the transfer of the juvenile concerned to an appropriate health-care setting).

The CPT calls upon the Spanish authorities to amend Article 55 of Royal Decree 1774/2004 and to abolish reduced and prolonged mechanical fixation of juveniles. Further, juveniles placed in temporary isolation in the dedicated cell of the ZRECS should no longer have their mattress withdrawn during the day.

5. Health care

187. The health-care staffing complement consisted of one full-time and one part-time GP (1.5 FTE), one permanent nurse, one contracted psychiatrist and one clinical psychologist. The establishment had a memorandum in place with the local health-care centre in Algeciras pursuant to which screening, laboratory, specialist care and emergency assistance would be provided.¹⁶⁵ The infirmary was in a pristine state of hygiene and adequately equipped. No complaints were heard from the juveniles as regards access to health care.

All newly admitted juveniles were medically screened within 24 hours which included a physical examination and recording of injuries,¹⁶⁶ blood tests, PCR testing for Covid-19, screening for HCV, HBV, HIV, syphilis and TBC.¹⁶⁷ Further, individual vaccination plans were set up for each juvenile.

In terms of medical confidentiality, the CPT's delegation heard that, in principle, security guards were present during medical consultations. In the Committee's view, there can be no justification for security guards being systematically present during such examinations; their presence is detrimental to the establishment of a proper doctor-patient relationship and usually unnecessary from a security point of view.

The CPT recommends that the principle of medical confidentiality of medical examinations of juveniles at "La Marchenilla" juvenile detention centre be respected in compliance with the relevant national Spanish legislation.

¹⁶⁵ Every juvenile was assigned a GP from the above-mentioned health-care centre.

¹⁶⁶ Injury reports were transmitted to the director of the establishment and the competent juvenile courts.

¹⁶⁷ By means of a Mantoux test.

188. At the time of the visit, 26 out of the 89 juveniles were accommodated in one of the three dedicated therapeutic modules which were characterised by more intensive pharmacological and psychotherapeutic interventions for mental and substance use disorders, as well as targeted socio-educational and group therapeutic activities on intra-family violence, on dependence on modern technologies and pet therapy.

Further, 35 juveniles had a regular prescription for psychotropic medication¹⁶⁸ included in their individual treatment plans.¹⁶⁹ An analysis by the delegation of the therapeutic protocols and prescribed dosages concluded that the principles of good clinical practice were being complied with in the administration of psychotropic medication, in accordance with the age profile and diagnoses of the juveniles in question.¹⁷⁰ The consent of parents as guardians was sought in writing for the administration of regular medication to the juveniles. Further, juveniles could refuse medication at any time by signing a written declaration, which was included in their file.

6. Discipline and security measures

189. The disciplinary system is regulated by Article 60 of the Organic Law on Criminal Responsibility of Juveniles (LCRJ) and Articles 59 to 85 of Royal Decree 1774/2004. Disciplinary offences are classified as minor, serious and very serious and the sanctions that may be imposed include reprimand, prohibition of participation in recreational activities for up to two months, deprivation of weekend home leave for up to one month, separation from other juveniles during weekends (for up to five weekends) and solitary confinement (“separation from the group”) for up to seven days.¹⁷¹ That said, it is still possible in practice that one single sanction for multiple offences might be imposed for a period not exceeding seven days to be executed at different consecutive periods separated by very short intervals. Further, self-harming for manipulative purposes is considered to be a serious disciplinary offence.

As regards disciplinary proceedings, the juveniles must be informed of the disciplinary charges, may present any evidence or statements in person to the disciplinary commission and may be assisted by a lawyer. A disciplinary sanction is imposed by the director of the establishment based upon a reasoned decision, a copy of which must be given to the juvenile concerned. The decision may be appealed to the juvenile judge and the juveniles must be informed about the right of appeal. The examination of the disciplinary registers kept at the establishment and the information gathered through interviews with juveniles indicated that these procedures were respected in practice.

¹⁶⁸ I.e. antipsychotics, antidepressants, psychostimulants, mood stabilisers, or anxiolytics.

¹⁶⁹ 13 of them were on benzodiazepine drugs.

¹⁷⁰ None of the juveniles on antipsychotic therapy had Clozapine included in the treatment protocol.

¹⁷¹ I.e. up to two days for serious offences and between three and seven days for very serious offences.

190. The CPT's delegation was, however, concerned by the high number of disciplinary sanctions at the centre.¹⁷² In particular, a measure of separation from the group had been imposed more than 300 times in the course of 2020 for periods ranging from two to six days. Further, juveniles told the delegation that, in the course of the enforcement of the measure, they did not receive their regular visits from the GP on a daily basis.¹⁷³ In addition, the daily outdoor exercise entitlement of two hours was offered in a dedicated courtyard of an austere design¹⁷⁴ which did not possess any means of rest or physical exercise equipment.

191. The CPT must stress that any form of isolation may have a detrimental effect on the physical and/or mental well-being of juveniles. In this regard, the Committee observes an increasing trend at the international level to abolish solitary confinement as a disciplinary sanction in respect of juveniles. Particular reference should be made to the United Nations Standard Minimum Rules on the Treatment of Prisoners (*Nelson Mandela Rules*) which have recently been revised by a unanimous resolution of the United Nations General Assembly and which explicitly stipulate in Rule 45 (2) that solitary confinement shall not be imposed on juveniles. Further, reference is also made to Rule 60.6.a of the recently revised European Prison Rules stipulating that solitary confinement should never be imposed to a juvenile.¹⁷⁵ The CPT fully endorses this approach.

The CPT recommends that the Spanish authorities take steps to end the use of solitary confinement as a disciplinary punishment for juveniles, which should include amending the relevant legislation accordingly.

192. As mentioned in paragraph 175 pursuant to Article 33, paragraph 2 of Royal Decree 1774/2004, juveniles may be separated in a cell of the ZRECS module for reasons of incompatibility and for having a negative effect on the good order in the respective living unit. In terms of activities, separated juveniles were seen by psychologists and educators on a regular basis but could not participate in group therapeutic activities and workshops. The placement of a juvenile in a ZRECS module for purposes of separation was subject to a decision of the director upon the proposal of the multi-disciplinary team.

As mentioned in paragraph 7, at the time of the CPT's visit, a juvenile affected by a mental disorder¹⁷⁶ had spent a prolonged period of time in a cell of the ZRECS¹⁷⁷ due to his incompatibility and disruptive behaviour in different ordinary living units. The juvenile in question had sustained and personalised contact with a dedicated educator assigned to him, as well as with a psychologist, and various individual activities were being offered to him. That said, the frequent and repeated attempts of staff to re-integrate him in an ordinary living unit had failed due to his specific mental disorder which required special therapeutic support in a specialized health-care facility. In response to the delegation's immediate observation on this case, the Spanish authorities informed the CPT that, on 1 October 2020, the juvenile had been transferred to a hospital in Malaga.

¹⁷² I.e. 410 sanctions in the course of 2020 as at 25 September 2020.

¹⁷³ As provided by Article 66, paragraph 4 of Royal Decree 1774/2004.

¹⁷⁴ The courtyard in question (C4) measured approximately 130m², offered access to a toilet and wash basin and was surrounded by a three-metre-high concrete walls.

¹⁷⁵ Rule 60.6.a of the European Prison Rules reads: "Solitary confinement, that is the confinement of a prisoner for more than 22 hours a day without meaningful human contact, shall never be imposed on children, pregnant women, breastfeeding mothers or parents with infants in prison."

¹⁷⁶ i.e. Asperger's Syndrome and Attention-Deficit Hyperactivity Disorder. Further, he also possessed a 42 percent disability rating.

¹⁷⁷ i.e. for a total of 181 nights out of 265 in the course of 2020.

193. A suicide prevention protocol (PPRS) was in force at the establishment which could be activated by the director upon the proposal of the health-care staff; it implied an intensive monitoring of the juvenile in question by educators and custodial staff and the application of certain restrictions based on a detailed risk assessment.¹⁷⁸ Further, an additional preventive measure consists of the accommodation of the juvenile in a double-occupancy cell with another young person to provide emotional support and complement the supervision of staff members present in the module.

In exceptional and acute cases of evident suicide risk, the juvenile might be placed in an observation cell of the ZRECS equipped with CCTV. The protocol had been resorted to seven times in the course of 2019 and four times in the course of 2020, there were accurate reviews by the psychologist and doctor of the juvenile's mental state and the restrictions applied appeared to be proportionate to the profile.

194. Article 54.d of Royal Decree 1774/2004 provides for the full strip-search of a juvenile based on an individual risk assessment in the case that he/she is suspected of hiding illicit substances or dangerous objects. The measure must be ordered by the director and communicated to the competent judge.¹⁷⁹ That said, several juveniles told the delegation that they had to undress fully when being strip-searched by security staff.

The CPT considers that a strip-search is a very invasive and potentially degrading measure. When carrying out such a search, every reasonable effort should be made to minimise embarrassment; detained persons who are searched should not normally be required to remove all their clothes at the same time, e.g. a person should be allowed to remove clothing above the waist and put the clothes back on before removing further clothing.

The CPT recommends that the Spanish authorities amend the current practice used when carrying out strip-searches to bring it into line with the precepts set out above.

7. Other issues

195. As regards staffing levels, there was a total of 81 educators working at the establishment (in principle two per module on each shift), 27 educational monitors, seven vocational trainers, six coordinators of modules, six social workers and eight psychologists. This is positive.

In terms of custodial staff, the supervision of the internal security, as well as admission to the establishment, was performed by 45 vigilantes from a private security firm (working in shifts of 10 during the day and five during the night).

The training activities on offer to treatment staff were varied in terms of frequency and subject matter.¹⁸⁰ That said, **the CPT would like to know more about the targeted training activities proposed and enforced in respect of security staff, namely on issues such as de-escalation and manual control techniques vis-à-vis agitated juveniles** (see paragraph 178).

¹⁷⁸ Such as e.g. the withdrawal of potentially dangerous objects (e.g. belts, cables, batteries, etc.), the door of the cell being kept open and the windows shut, as well as periodic contacts with psychologists and health-care staff.

¹⁷⁹ It had been resorted to 55 times in respect of 38 juveniles in the course of 2019.

¹⁸⁰ More than 40 training activities of a duration of up to ten days had been organised in the course of 2019 on issues such as de-escalation and the application of means of restraint, self-control, resilience and treatment of addictions.

196. As regards contact with the outside world, according to Article 40 of Royal Decree 1774/2004, juveniles are entitled to receive two visits a week, each lasting 40 minutes (which may be accumulated into one visit). In addition, they may receive a family visit once a month (3 hours) and, under certain conditions, an intimate visit once a month for one hour. In the establishment visited, these minimum entitlements were respected and, in reality, juveniles were offered longer visits. Further, juveniles could make two phone calls a week (for 10 minutes each)¹⁸¹ and receive phone calls during their recreation time. They could also send letters and parcels, in principle without limitation.

The CPT recommends that the telephone entitlement of juveniles detained at “La Marchenilla” juvenile detention centre be increased to four telephone calls per week.

197. Effective complaints and inspection procedures are basic safeguards against ill-treatment in juvenile establishments. Juveniles should have avenues of complaint open to them, both within and outside the establishments’ administrative system, and be entitled to confidential access to an independent authority.

The CPT notes positively in this respect that the establishment was regularly visited by juvenile prosecutors and judges,¹⁸² as well as the NPM/Ombudsman; juveniles confirmed that they could request to meet them and talk to them in private. Further, juveniles could make complaints (and requests) to those bodies (in open or closed envelopes) or to the director of the establishment.¹⁸³

¹⁸¹ Additional phone calls entitlements were granted based on the existing behavioural point system in force at the establishment.

¹⁸² The competent juvenile judges from Cadiz, Malaga and Algeciras were visiting the establishment on a monthly basis. During the Covid-19-related lockdown, such visits had been replaced by videoconference.

¹⁸³ A total of 48 complaints and requests had been submitted in the course of 2019 and 32 during the first nine months of 2020. Unsurprisingly, the main subject matter of complaints and requests concerned leave and permits.

APPENDIX I

List of the establishments visited by the CPT's delegation

Establishments under the Ministry of the Interior of Spain

National Police

- Police Station, Algeciras
- Police Station, Castellón de la Plana
- Police Station, Madrid (Centre)
- Police Station, Madrid (Hortaleza)
- Police Station, Madrid (Moratalaz)
- Police Station for minors (G.R.U.M.E.), Madrid
- Police Station, Seville (Blas Infante)
- Police Station, Valencia (Zapadores)

Local Police

- Local Police Station of Utrera

Prisons

- Ávila Women's Prison (Brieva)
- Castellón II Prison
- Madrid V Prison (Soto del Real) *
- Madrid VII Prison (Estremera)
- Seville I Prison*
- Seville II Prison
- Valencia Prison (Picassent)*
- Alicante Penitentiary Psychiatric Hospital
- Seville Penitentiary Psychiatric Hospital

*Targeted visits to interview newly-arrived prisoners on remand.

Establishments under the authority of the autonomous community of Andalusia

- Juvenile Detention Centre, "La Marchenilla", Algeciras

APPENDIX II

List of the national and regional authorities, non-governmental organisations and persons with whom the delegation held consultations

A. National authorities

Ministry of Interior

Fernando Grande-Marlaska	Minister
Ángel Luis Ortíz Gonzáles	Secretary General for Penitentiary Institutions
Elena Garzón Otamendi	Director General for International Relations and Migration
Alberto Ruiz Moreno	Head of Service, Sub-directorate General for International Relations and Migration, Directorate General for International Relations and Migration (CPT liaison officer)

B. Other organisations

National Preventive Mechanism, Office of the Ombudsman (*Defensor del Pueblo*)

“Coordinadora para la Prevención de la Tortura”.